

AMENDED IN SENATE JANUARY 29, 2002

AMENDED IN SENATE JANUARY 7, 2002

SENATE BILL

No. 657

Introduced by Senator Scott
(Principal coauthors: Senators Bowen and Speier)
(Coauthors: Senators Costa, Karnette, Machado, and Perata)
(Coauthor: Assembly Member Nakano)

February 23, 2001

~~An act to amend Sections 17085, 17140, 17140.3, 17501, 17551, 23701s, 23705, 23711, and 23712 of, and to add Sections 17144.5 and 17205~~ *An act to amend Sections 17024.5, 17085, 17140, 17140.3, 17144, 17152, 17271, 17279, 17279.4, 17501, 17551, 17570, 17751, 17752, 17760.5, 23038.5, 23051.5, 23701s, 23705, 23711, 23712, 23800.5, 23801, 23802, 23806, 23811, 24307, 24343.7, 24349, 24355.5, 24369.4, 24443, 24710, and 24872.4 of, and to add Sections 17144.5, 17205, 17207.6, and 24347.6 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 657, as amended, Scott. Income and bank and corporation taxes: ~~retirement plans~~ *federal conformity.*

Under the Personal Income Tax Law and the Bank and Corporation Tax Law a taxpayer, generally, has the option to treat specified transactions differently than the manner in which the transaction was elected to be treated for federal income tax purposes.

This bill would provide, with specified exceptions, that any election made for federal income taxes would apply for state income tax purposes.

This bill would make certain other changes in conformance with federal law, as specified, with respect to the denial of deduction for club dues and for certain excessive employee remuneration.

The Personal Income Tax Law, in partial conformity with federal law, provides tax benefits for contributions to specified retirement plans.

This bill would, in conformance with the Economic Growth and Tax Relief Reconciliation Act of 2001, expand the tax benefits allowed for contributions to these retirement plans.

This bill would take effect immediately as a tax levy.

~~The Personal Income Tax Law and the Bank and Corporation Tax Law, in partial conformity with federal law, provide various tax benefits and specified rules and procedures relating to contributions to retirement plans.~~

~~This bill would conform those state laws to those provisions of the federal Economic Growth and Tax Relief Reconciliation Act of 2001 that apply to retirement plans and certain trusts, including provisions relating to annuities and certain proceeds of life insurance contracts, IRA's, employee annuities, qualified state tuition programs, retirement savings, deferred compensation plans, employee funded pension trusts, VEBA's, and group legal service plans.~~

~~This bill would take effect immediately as a tax levy.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 17085 of the Revenue and Taxation~~
2 ~~Code~~
3 ~~SECTION 1. Section 17024.5 of the Revenue and Taxation~~
4 ~~Code is amended to read:~~
5 ~~17024.5. (a) (1) Unless otherwise specifically provided, the~~
6 ~~terms “Internal Revenue Code,” “Internal Revenue Code of~~
7 ~~1954,” or “Internal Revenue Code of 1986,” for purposes of this~~
8 ~~part, mean Title 26 of the United States Code, including all~~
9 ~~amendments thereto as enacted on the specified date for the~~
10 ~~applicable taxable year as follows:~~
11



Taxable Year	Specified Date of Internal Revenue Code Sections
(A) For taxable years beginning on or after January 1, 1983, and on or before December 31, 1983	January 15, 1983
(B) For taxable years beginning on or after January 1, 1984, and on or before December 31, 1984	January 1, 1984
(C) For taxable years beginning on or after January 1, 1985, and on or before December 31, 1985	January 1, 1985
(D) For taxable years beginning on or after January 1, 1986, and on or before December 31, 1986	January 1, 1986
(E) For taxable years beginning on or after January 1, 1987, and on or before December 31, 1988	January 1, 1987
(F) For taxable years beginning on or after January 1, 1989, and on or before December 31, 1989	January 1, 1989
(G) For taxable years beginning on or after January 1, 1990, and on or before December 31, 1990	January 1, 1990
(H) For taxable years beginning on or after January 1, 1991, and on or before December 31, 1991	January 1, 1991
(I) For taxable years beginning on or after January 1, 1992, and on or before December 31, 1992	January 1, 1992
(J) For taxable years beginning on or after January 1, 1993, and on or before December 31, 1996	January 1, 1993
(K) For taxable years beginning on or after January 1, 1997, and on or before December 31, 1997	January 1, 1997
(L) For taxable years beginning on or after January 1, 1998	January 1, 1998

(2) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the taxable year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part shall be applicable to the same taxable years as the incorporated provisions.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference



1 into this part. Unless otherwise provided, the provisions described
2 in the preceding sentence, to the extent that they modify provisions
3 that are incorporated into this part, are declaratory of existing law
4 and shall be applied in the same manner and for the same periods
5 as specified in the Revenue Reconciliation Act of 1990.

6 (b) Unless otherwise specifically provided, when applying any
7 provision of the Internal Revenue Code for purposes of this part,
8 a reference to any of the following shall not be applicable for
9 purposes of this part:

10 (1) Except as provided in Chapter 4.5 (commencing with
11 Section 23800) of Part 11 of Division 2, an electing small business
12 corporation, as defined in Section 1361(b) of the Internal Revenue
13 Code.

14 (2) Domestic international sales corporations (DISC), as
15 defined in Section 992(a) of the Internal Revenue Code.

16 (3) A personal holding company, as defined in Section 542 of
17 the Internal Revenue Code.

18 (4) A foreign personal holding company, as defined in Section
19 552 of the Internal Revenue Code.

20 (5) A foreign investment company, as defined in Section
21 1246(b) of the Internal Revenue Code.

22 (6) A foreign trust, as defined in Section 679 of the Internal
23 Revenue Code.

24 (7) Foreign income taxes and foreign income tax credits.

25 (8) Section 911 of the Internal Revenue Code, relating to
26 United States citizens living abroad.

27 (9) A foreign corporation, except that Section 367 of the
28 Internal Revenue Code shall be applicable.

29 (10) Federal tax credits and carryovers of federal tax credits.

30 (11) Nonresident aliens.

31 (12) Deduction for personal exemptions, as provided in
32 Section 151 of the Internal Revenue Code.

33 (13) The tax on generation-skipping transfers imposed by
34 Section 2601 of the Internal Revenue Code.

35 (14) The tax, relating to estates, imposed by Section 2001 or
36 2101 of the Internal Revenue Code.

37 (c) (1) The provisions contained in Sections 41 to 44,
38 inclusive, and 172 of the Tax Reform Act of 1984 (Public Law
39 98-369), relating to treatment of debt instruments, shall not be
40 applicable for taxable years beginning before January 1, 1987.



1 (2) The provisions contained in Public Law 99-121, relating to
2 the treatment of debt instruments, shall not be applicable for
3 taxable years beginning before January 1, 1987.

4 (3) For each taxable year beginning on or after January 1, 1987,
5 the provisions referred to by paragraphs (1) and (2) shall be
6 applicable for purposes of this part in the same manner and with
7 respect to the same obligations as the federal provisions, except as
8 otherwise provided in this part.

9 (d) When applying the Internal Revenue Code for purposes of
10 this part, regulations promulgated in final form or issued as
11 temporary regulations by “the secretary” shall be applicable as
12 regulations under this part to the extent that they do not conflict
13 with this part or with regulations issued by the Franchise Tax
14 Board.

15 (e) Whenever this part allows a taxpayer to make an election,
16 *on or after January 1, 2002, in taxable years beginning on or after*
17 *January 1, 2002*, the following rules shall apply:

18 (1) A proper election *for federal income tax purposes* filed with
19 the Internal Revenue Service in accordance with the Internal
20 Revenue Code or regulations issued by “the secretary” shall be
21 ~~deemed to be a proper~~ *treated as an election for purposes of this*
22 *part and a separate election for state purposes shall not be*
23 *allowed*, unless otherwise provided in this part or in regulations
24 issued by the Franchise Tax Board.

25 (2) A copy of that election shall be furnished to the Franchise
26 Tax Board upon request.

27 (3) ~~To obtain treatment other than that elected for federal~~
28 ~~purposes, a separate election shall be filed at the time and in the~~
29 ~~manner required by the Franchise Tax Board. If a taxpayer does~~
30 ~~not make a proper election for federal income tax purposes, a~~
31 ~~separate election for purposes of this part shall not be allowed~~
32 ~~unless otherwise provided in this part.~~

33 (f) Whenever this part allows or requires a taxpayer to file an
34 application or seek consent, the rules set forth in subdivision (e)
35 shall be applicable with respect to that application or consent.

36 (g) When applying the Internal Revenue Code for purposes of
37 determining the statute of limitations under this part, any reference
38 to a period of three years shall be modified to read four years for
39 purposes of this part.



1 (h) When applying, for purposes of this part, any section of the
2 Internal Revenue Code or any applicable regulation thereunder, all
3 of the following shall apply:

4 (1) References to “adjusted gross income” shall mean the
5 amount computed in accordance with Section 17072, except as
6 provided in paragraph (2).

7 (2) References to “adjusted gross income” for purposes of
8 computing limitations based upon adjusted gross income, shall
9 mean the amount required to be shown as adjusted gross income
10 on the federal tax return for the same taxable year.

11 (3) Any reference to “subtitle” or “chapter” shall mean this
12 part.

13 (4) The provisions of Section 7806 of the Internal Revenue
14 Code, relating to construction of title, shall apply.

15 (5) Any provision of the Internal Revenue Code that becomes
16 operative on or after the specified date for that taxable year shall
17 become operative on the same date for purposes of this part.

18 (6) Any provision of the Internal Revenue Code that becomes
19 inoperative on or after the specified date for that taxable year shall
20 become inoperative on the same date for purposes of this part.

21 (7) Due account shall be made for differences in federal and
22 state terminology, effective dates, substitution of “Franchise Tax
23 Board” for “secretary” when appropriate, and other obvious
24 differences.

25 (i) Any reference to a specific provision of the Internal
26 Revenue Code shall include modifications of that provision, if any,
27 in this part.

28 *SEC. 2. Section 17085 of the Revenue and Taxation Code is*
29 *amended to read:*

30 17085. Section 72 of the Internal Revenue Code, *as amended*
31 *by the Economic Growth and Tax Relief Reconciliation Act of 2001*
32 *(Public Law 107-16)*, relating to annuities and certain proceeds of
33 life insurance contracts, ~~shall be~~ *is* modified as follows:

34 (a) The amendments and transitional rules made by Public Law
35 99-514 shall be applicable to this part for the same transactions and
36 the same years as they are applicable for federal *income tax*
37 purposes, except that the repeal of Section 72(d) of the Internal
38 Revenue Code, relating to repeal of special rule for employees’
39 annuities, shall apply only to the following:



1 (1) Any individual whose annuity starting date is after
2 December 31, 1986.

3 (2) At the election of the taxpayer, any individual whose
4 annuity starting date is after July 1, 1986, and before January 1,
5 1987.

6 (b) The amount of a distribution from an individual retirement
7 account or annuity or employees' trust or employee annuity that
8 is includable in gross income for federal *income tax* purposes shall
9 be reduced for purposes of this part by the lesser of either of the
10 following:

11 (1) An amount equal to the amount includable in federal gross
12 income for the taxable year.

13 (2) An amount equal to the basis in the account or annuity
14 allowed by Section 17507 (relating to individual retirement
15 accounts and simplified employee pensions) or the increased basis
16 allowed by Sections 17504 and 17506 (relating to plans of
17 self-employed individuals), *the increased basis allowed by*
18 *Section 17501, or the increased basis allowed by Section 17551*
19 *that is remaining after adjustment for reductions in gross income*
20 *under this provision in prior taxable years.*

21 (c) (1) Except as provided in paragraph (2), the amount of the
22 penalty imposed under this part shall be computed in accordance
23 with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code
24 using a rate of 2¹/₂ percent, in lieu of the rate provided in those
25 sections.

26 (2) In the case where Section 72(t)(6) of the Internal Revenue
27 Code, relating to special rules for simple retirement accounts,
28 applies, the rate in paragraph (1) shall be 6 percent in lieu of the
29 2¹/₂ percent rate specified therein.

30 (d) Section 72(f)(2) of the Internal Revenue Code, relating to
31 special rules for computing employees' contributions, shall be
32 applicable without applying the exceptions which immediately
33 follow that paragraph.

34 *SEC. 3. Section 17140 of the Revenue and Taxation Code is*
35 *amended to read:*

36 17140. (a) For purposes of this section, the following terms
37 have the following meanings as provided in the Golden State
38 Scholarshare Trust Act (Article 19 (commencing with Section
39 69980) of Chapter 2 of Part 42 of the Education Code):



- 1 (1) “Beneficiary” has the meaning set forth in subdivision (c)
- 2 of Section 69980 of the Education Code.
- 3 (2) “Benefit” has the meaning set forth in subdivision (d) of
- 4 Section 69980 of the Education Code.
- 5 (3) “Participant” has the meaning set forth in subdivision (h)
- 6 of Section 69980 of the Education Code.
- 7 (4) “Participation agreement” has the meaning set forth in
- 8 subdivision (i) of Section 69980 of the Education Code.
- 9 (5) “Scholarshare trust” has the meaning set forth in
- 10 subdivision (f) of Section 69980 of the Education Code.
- 11 (b) Except as otherwise provided in subdivision (c), gross
- 12 income of a beneficiary or a participant does not include any of the
- 13 following:
- 14 (1) Any distribution or earnings under a Scholarshare trust
- 15 participation agreement, as provided in Article 19 (commencing
- 16 with Section 69980) of Chapter 2 of Part 42 of the Education Code.
- 17 (2) Any contribution to the Scholarshare trust on behalf of a
- 18 beneficiary shall not be includable as gross income of that
- 19 beneficiary.
- 20 (c) (1) Any distribution under a Scholarshare trust
- 21 participation agreement shall be includable in the gross income of
- 22 the distributee in the manner as provided under Section 72 of the
- 23 Internal Revenue Code, as modified by Section 17085, to the
- 24 extent not excluded from gross income under this part. For
- 25 purposes of applying Section 72 of the Internal Revenue Code, the
- 26 following apply:
- 27 (A) All Scholarshare trust accounts of which an individual is a
- 28 beneficiary shall be treated as one account, except as otherwise
- 29 provided.
- 30 (B) All distributions during a taxable year shall be treated as
- 31 one distribution.
- 32 (C) The value of the participation agreement, income on the
- 33 participation agreement, and investment in the participation
- 34 agreement shall be computed as of the close of the calendar year
- 35 in which the taxable year begins.
- 36 (2) A contribution by a for-profit or nonprofit entity, or by a
- 37 state or local government agency, for the benefit of an owner or
- 38 employee of that entity or a beneficiary whom the owner or
- 39 employee has the power to designate, including the owner or



1 employee’s minor children, shall be included in the gross income
2 of that owner or employee in the year the contribution is made.

3 (3) For purposes of this subdivision, “distribution” includes
4 any benefit furnished to a beneficiary under a participation
5 agreement, as provided in Article 19 (commencing with Section
6 69980) of Chapter 2 of Part 42 of the Education Code.

7 (4) (A) Paragraph (1) shall not apply to that portion of any
8 distribution that, within 60 days of distribution, is transferred to
9 the credit of another beneficiary under the Scholarshare trust who
10 is a “member of the family,” as that term is used in Section
11 529(e)(2) of the Internal Revenue Code, as amended by Section
12 211 of the Taxpayer Relief Act of 1997 (~~P.L.~~ (*Public Law* 105-34),
13 of the former beneficiary of that Scholarshare trust.

14 (B) Any change in the beneficiary of an interest in the
15 Scholarshare trust shall not be treated as a distribution for purposes
16 of paragraph (1) if the new beneficiary is a “member of the
17 family,” as that term is used in Section 529(e)(2) of the Internal
18 Revenue Code, as amended by Section 211 of the Taxpayer Relief
19 Act of 1997 (~~P.L.~~ (*Public Law* 105-34), of the former beneficiary
20 of that Scholarshare trust.

21 ~~(d) For purposes of determining adjusted gross income,~~
22 ~~Section 62(a)(9) of the Internal Revenue Code shall not apply to~~
23 ~~any amount forfeited upon distribution of an account created~~
24 ~~pursuant to a participation agreement.~~

25 ~~(e) The amendments made to the Internal Revenue Code by~~
26 ~~Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34) shall~~
27 ~~apply to taxable years beginning on or after January 1, 1998. For~~
28 ~~taxable years beginning on or after January 1, 2002, Sections~~
29 ~~529(c) and 529(e) of the Internal Revenue Code, as amended by~~
30 ~~Section 402 of the Economic Growth and Tax Relief Reconciliation~~
31 ~~Act of 2001 (Public Law 107-16), shall apply in lieu of~~
32 ~~subdivisions (b) and (c) of this section.~~

33 *SEC. 4. Section 17140.3 of the Revenue and Taxation Code is*
34 *amended to read:*

35 17140.3. Section 529 of the Internal Revenue Code, *as*
36 *amended by Section 402 of the Economic Growth and Tax Relief*
37 *Reconciliation Act of 2001 (Public Law 107-16), relating to*
38 *qualified state tuition programs, shall apply, except as otherwise*
39 *provided.*



1 (a) Section 529 (a) of the Internal Revenue Code is modified as
2 follows:

3 (1) By substituting the phrase “under this part and Part 11
4 (commencing with Section 23001)” in lieu of the phrase “under
5 this subtitle.”

6 (2) By substituting “Article 2 (commencing with Section
7 23731)” in lieu of “Section 511.”

8 (b) A copy of the report required to be filed with the Secretary
9 of the Treasury under Section 529(d) of the Internal Revenue Code
10 shall be filed with the Franchise Tax Board at the same time and
11 in the same manner as specified in that section.

12 *SEC. 5. Section 17144 of the Revenue and Taxation Code is*
13 *amended to read:*

14 17144. (a) Section 108(b)(2)(B) of the Internal Revenue
15 Code, relating to general business credit, is modified by
16 substituting “this part” in lieu of “Section 38 (relating to general
17 business credit).”

18 (b) Section 108(b)(2)(G) of the Internal Revenue Code,
19 relating to foreign tax credit carryovers, shall not apply.

20 (c) Section 108(b)(3)(B) of the Internal Revenue Code,
21 relating to credit carryover reduction, is modified by substituting
22 “11.1 cents” in lieu of “33¹/₃ cents” in each place in which it
23 appears. In the case where more than one credit is allowable under
24 this part, the credits shall be reduced on a pro rata basis.

25 (d) Section 108(g)(3)(B) of the Internal Revenue Code,
26 relating to adjusted tax attributes, is modified by substituting
27 “(\$9)” in lieu of “(\$3).”

28 (e) (1) If a taxpayer makes an election for federal income tax
29 purposes under Section 108(c) of the Internal Revenue Code,
30 relating to treatment of discharge of qualified real property
31 business indebtedness, a separate election shall not be allowed
32 ~~under paragraph (3) of subdivision (c) of Section 17024.5~~ and the
33 federal election shall be binding for purposes of this part.

34 (2) If a taxpayer has not made an election for federal income tax
35 purposes under Section 108(c) of the Internal Revenue Code,
36 relating to treatment of discharge of qualified real property
37 business indebtedness, then the taxpayer shall not be allowed to
38 make that election for purposes of this part.

39 *SEC. 6. Section 17144.5 is added to the Revenue and Taxation*
40 *Code, to read:*



1 17144.5. Section 132 of the Internal Revenue Code, as
2 amended by Title VI of the Economic Growth and Tax Relief
3 Reconciliation Act of 2001 (Public Law 107-16), shall apply
4 except as otherwise provided.

5 SEC. 7. Section 17152 of the Revenue and Taxation Code is
6 amended to read:

7 17152. Section 121 of the Internal Revenue Code, relating to
8 exclusion of gain from sale of principal residence, is modified as
9 follows:

10 (a) The two-year period in Section 121(a) of the Internal
11 Revenue Code shall be reduced by the period of the taxpayer's
12 service, not to exceed 18 months, in the Peace Corps during the
13 five-year period ending on the date of the sale or exchange.

14 (b) If the taxpayer is prohibited from filing a joint return
15 pursuant to Section 18521, Section 121(b)(2)(A) of the Internal
16 Revenue Code shall nevertheless be treated as being satisfied if the
17 taxpayer files a joint return for federal income tax purposes for the
18 same taxable year. However, in no instance shall the total amount
19 excludable from gross income under Section 121(a) of the Internal
20 Revenue Code with respect to any sale or exchange exceed the
21 maximum amount allowed by Section 121(b) of the Internal
22 Revenue Code.

23 (c) (1) If a taxpayer has, at any time, made an election for
24 federal *income tax* purposes under Section 121(f) of the Internal
25 Revenue Code not to have Section 121 of the Internal Revenue
26 Code apply to a sale or exchange, Section 121 of the Internal
27 Revenue Code shall not apply to that sale or exchange for state
28 purposes, a separate election for state purposes shall not be
29 allowed ~~under paragraph (3) of subdivision (e) of Section 17024.5,~~
30 *and* the federal election shall be binding for purposes of this part,
31 and that election shall be treated as an election to include in gross
32 income for purposes of this part all the gain from the sale or
33 exchange of that property, including that amount which, but for
34 that election, would have been excluded from income under
35 Section 121(a) of the Internal Revenue Code for state purposes.

36 (2) If a taxpayer fails to make an election for federal *income tax*
37 purposes under Section 121(f) of the Internal Revenue Code to not
38 have Section 121 of the Internal Revenue Code apply to a sale or
39 exchange, no election under Section 121(f) of the Internal
40 Revenue Code shall be allowed for state purposes, Section 121 of



1 the Internal Revenue Code shall apply to that sale or exchange for
2 state purposes, and a separate election for state purposes shall not
3 be allowed ~~under paragraph (3) of subdivision (e) of Section~~
4 ~~17024.5.~~

5 (d) (1) If a taxpayer has, at any time, made an election for
6 federal *income tax* purposes under Section 312(d)(2) of the
7 Taxpayer Relief Act of 1997 (Public Law 105-34), relating to sales
8 before date of enactment, or Section 312(d)(4) of that act, relating
9 to binding contracts, to not have the amendments made by Section
10 312 of the Taxpayer Relief Act of 1997 (Public Law 105-34) apply
11 to a sale or exchange, the amendments made by the act adding this
12 subdivision shall not apply to that sale or exchange, Sections 1, 4,
13 and 6 of Chapter 610 of the Statutes of 1997 shall not apply to that
14 sale or exchange, a separate election for state purposes shall not be
15 allowed ~~under paragraph (3) of subdivision (e) of Section 17024.5;~~
16 and the federal election shall be binding for purposes of this part.

17 (2) If a taxpayer fails to make an election for federal *income tax*
18 purposes under Section 312(d)(2) of the Taxpayer Relief Act of
19 1997 (Public Law 105-34), relating to sales before date of
20 enactment, or Section 312(d)(4) of that act, relating to binding
21 contracts, to not have the amendments made by Section 312 of the
22 Taxpayer Relief Act of 1997 (Public Law 105-34) apply to a sale
23 or exchange, an election under Section 312(d)(2) of the Taxpayer
24 Relief Act of 1997 (Public Law 105-34), relating to sales before
25 date of enactment, or Section 312(d)(4) of that act, relating to
26 binding contracts, shall not be allowed for state purposes, the
27 amendments made by the act adding this subdivision shall apply
28 to that sale or exchange, Sections 1, 4, and 6 of Chapter 610 of the
29 Statutes of 1997 shall apply to that sale or exchange, and a separate
30 election for state purposes shall not be allowed ~~under paragraph (3)~~
31 ~~of subdivision (e) of Section 17024.5.~~

32 *SEC. 8. Section 17205 is added to the Revenue and Taxation*
33 *Code, to read:*

34 *17205. Section 219 of the Internal Revenue Code, as amended*
35 *by Title VI of the Economic Growth and Tax Relief Reconciliation*
36 *Act of 2001 (Public Law 107-16), relating to retirement savings,*
37 *shall apply, except as otherwise provided.*

38 *SEC. 9. Section 17207.6 is added to the Revenue and Taxation*
39 *Code, to read:*



1 17207.6. *Notwithstanding subdivision (e) of Section 17024.5,*
2 *a taxpayer may make a separate state election, under Section*
3 *165(i)(1) of the Internal Revenue Code, to take a loss attributable*
4 *to a disaster into account in the taxable year immediately*
5 *preceding the taxable year in which the disaster occurred.*

6 SEC. 10. *Section 17271 of the Revenue and Taxation Code is*
7 *amended to read:*

8 17271. Section 274(a)(3) of the Internal Revenue Code,
9 relating to denial of deduction for club dues, ~~shall not apply.~~ *is*
10 *modified by substituting “for taxable years beginning on or after*
11 *January 1, 2002, and before January 1, 2003, a deduction equal*
12 *to 25 percent of the amounts paid or incurred shall be allowed*
13 *under this part” for “no deduction shall be allowed under this*
14 *chapter.”*

15 SEC. 11. *Section 17279 of the Revenue and Taxation Code is*
16 *amended to read:*

17 17279. Section 197 of the Internal Revenue Code, relating to
18 amortization of goodwill and certain other intangibles, is modified
19 as follows:

20 (a) (1) Section 13261(g) of the Revenue Reconciliation Act of
21 1993 (~~P.L.~~ *(Public Law 103-66)*), relating to effective dates, shall
22 apply, except as otherwise provided.

23 (2) (A) If a taxpayer has, at any time, made an election for
24 federal *income tax* purposes under Section 13261(g)(2) of the
25 Revenue Reconciliation Act of 1993 (~~P.L.~~ *(Public Law 103-66)*),
26 relating to election to have amendments apply to property acquired
27 after July 25, 1991, or Section 13261(g)(3) of that act, relating to
28 elective binding contract exception, a separate election for state
29 purposes shall not be allowed ~~under paragraph (3) of subdivision~~
30 ~~(e) of Section 17024.5~~ and the federal election shall be binding for
31 purposes of this part.

32 (B) If a taxpayer has not made an election for federal *income*
33 *tax* purposes under Section 13261(g)(2) of the Revenue
34 Reconciliation Act of 1993 (~~P.L.~~ *(Public Law 103-66)*), relating to
35 election to have amendments apply to property acquired after July
36 25, 1991, or Section 13261(g)(3) of that act, relating to elective
37 binding contract exception, with respect to property acquired
38 before August 11, 1993, then the taxpayer shall not be allowed to
39 make an election under Section 13261(g) of the Revenue



1 Reconciliation Act of 1993 (~~P.L.~~ *Public Law* 103-66), for
2 purposes of this part, with respect to that property.

3 (b) Notwithstanding any other provision of this section, each of
4 the following shall apply:

5 (1) No deduction shall be allowed under this section for any
6 taxable year beginning prior to January 1, 1994.

7 (2) No inference is intended with respect to the allowance or
8 denial of any deduction for amortization in any taxable year
9 beginning before January 1, 1994.

10 (3) In the case of an intangible that was acquired in a taxable
11 year beginning before January 1, 1994, the amount to be amortized
12 shall not exceed the adjusted basis of that intangible as of the first
13 day of the first taxable year beginning on or after January 1, 1994,
14 and that amount shall be amortized ratably over the period
15 beginning with the first month of the first taxable year beginning
16 on or after January 1, 1994, and ending 15 years after the month
17 in which the intangible was acquired.

18 *SEC. 12. Section 17279.4 of the Revenue and Taxation Code*
19 *is amended to read:*

20 17279.4. Section 198 of the Internal Revenue Code, relating
21 to expensing of environmental remediation costs, is modified as
22 follows:

23 (a) (1) If a taxpayer has, at any time, made an election for
24 federal *income tax* purposes under Section 198(a) of the Internal
25 Revenue Code to have Section 198 of the Internal Revenue Code
26 apply to a qualified environmental remediation expenditure,
27 Section 198 of the Internal Revenue Code shall apply to that
28 qualified environmental remediation expenditure for state
29 purposes, a separate election for state purposes shall not be
30 allowed ~~under paragraph (3) of subdivision (e) of Section 17024.5,~~
31 and the federal election shall be binding for purposes of this part.

32 (2) If a taxpayer fails to make an election for federal *income tax*
33 purposes under Section 198(a) of the Internal Revenue Code to
34 have Section 198 of the Internal Revenue Code apply to a qualified
35 environmental remediation expenditure, an election under Section
36 198(a) of the Internal Revenue Code shall not be allowed for state
37 purposes, Section 198 of the Internal Revenue Code shall not apply
38 to that qualified environmental remediation expenditure for state
39 purposes, and a separate election for state purposes shall not be
40 allowed ~~under paragraph (3) of subdivision (e) of Section 17024.5.~~



1 (b) No inference as to the proper treatment for purposes of this
2 part of qualified environmental remediation expenditures for
3 periods before the enactment of this section shall be made.

4 *SEC. 13. Section 17501 of the Revenue and Taxation Code is*
5 *amended to read:*

6 17501. (a) Subchapter D of Chapter 1 of Subtitle A of the
7 Internal Revenue Code, relating to deferred compensation, shall
8 apply, except as otherwise provided.

9 (b) *Notwithstanding Section 17024.5, Part I of Subchapter D*
10 *of Chapter 1 of Subtitle A of the Internal Revenue Code, relating*
11 *to pension, profit sharing, stock bonus plans, etc., shall apply,*
12 *except as otherwise provided, without regard to taxable year to the*
13 *same extent as applicable for federal purposes.*

14 (c) *The maximum amount of elective deferrals (as defined in*
15 *Section 402(g)(3)) for the taxable year that may be excluded from*
16 *gross income under Section 403(g) of the Internal Revenue Code,*
17 *as applicable for state purposes, shall not exceed the amount of*
18 *elective deferrals that may be excluded from gross income under*
19 *Section 402(g) of the Internal Revenue Code, as amended by Title*
20 *VI of the Economic Growth and Tax Relief Reconciliation Act of*
21 *2001 (Public Law 107-16), including additional elective deferrals*
22 *under Section 414(v) of the Internal Revenue Code, as added by*
23 *Title VI of the Economic Growth and Tax Relief Reconciliation Act*
24 *of 2001 (Public Law 107-16).*

25 (d) (1) *For taxable years beginning on or after January 1,*
26 *2002, the basis of any person in the plan, account, or annuity shall*
27 *be increased by the amount of elective deferrals not excluded as a*
28 *result of the application of subdivision (c).*

29 (2) *Any basis described in paragraph (1) shall be recovered in*
30 *the manner specified in Section 17085.*

31 (e) *Notwithstanding the limitations provided in subdivision (c),*
32 *any income attributable to elective deferrals in taxable years*
33 *beginning on or after January 1, 2002, in conformance with Part*
34 *I of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue*
35 *Code, as applicable for federal and state purposes, shall not be*
36 *includible in the gross income of the individual for whose benefit*
37 *the plan or account was established until distributed pursuant to*
38 *the plan or by operation of law.*

39 *SEC. 14. Section 17551 of the Revenue and Taxation Code is*
40 *amended to read:*

1 17551. (a) Subchapter E of Chapter 1 of Subtitle A of the
2 Internal Revenue Code, relating to accounting periods and
3 methods of accounting, shall apply, except as otherwise provided.

4 (b) Section 444(c)(1) of the Internal Revenue Code, relating to
5 effect of election, shall not apply.

6 (c) (1) *Notwithstanding Section 17024.5, Section 457 of the*
7 *Internal Revenue Code, relating to deferred compensation plans*
8 *of state and local governments and tax- exempt organizations,*
9 *shall apply, except as otherwise provided, without regard to*
10 *taxable year to the same extent as applicable for federal purposes.*

11 (2) *The maximum deferred compensation for the taxable year*
12 *that may be excluded from gross income under Section 457 of the*
13 *Internal Revenue Code shall not exceed the amount of deferred*
14 *compensation that may be excluded from gross income under*
15 *Section 457 of the Internal Revenue Code, as amended by Title VI*
16 *of the Economic Growth and Tax Relief Reconciliation Act of 2001*
17 *(Public Law 107-16), including additional elective deferrals*
18 *under Section 414(v) of the Internal Revenue Code, as added by*
19 *Title VI of the Economic Growth and Tax Relief Reconciliation Act*
20 *of 2001 (Public Law 107-16).*

21 (d) (1) *For taxable years beginning on or after January 1,*
22 *2002, the basis of any person in the plan shall be increased by the*
23 *amount of compensation not allowed to be excluded under*
24 *subdivision (a).*

25 (2) *Any basis described in paragraph (1) shall be recovered in*
26 *the manner specified in Section 17085.*

27 (e) *Notwithstanding the limitations provided in subdivision (a),*
28 *any income attributable to compensation deferred in a plan in*
29 *taxable years beginning on or after January 1, 2002, in*
30 *conformance with Section 457 of the Internal Revenue Code, as*
31 *applicable for federal and state purposes, shall not be includable*
32 *in the gross income of the individual for whose benefit the plan was*
33 *established until distributed pursuant to the plan or by operation*
34 *of law.*

35 *SEC. 15. Section 17570 of the Revenue and Taxation Code is*
36 *amended to read:*

37 17570. (a) For each taxable year beginning on or after
38 January 1, 1997, Section 475 of the Internal Revenue Code,
39 relating to mark to market accounting method for securities
40 dealers, shall apply, except as otherwise provided.



1 (b) Section 13233(c)(2)(C) of the Revenue Reconciliation Act
2 of 1993-~~P.L.~~ (*Public Law* 103-66), relating to the effective date
3 for changes in the mark to market accounting method for securities
4 dealers, is modified to provide that the amount taken into account
5 under Section 481 of the Internal Revenue Code of 1986 shall be
6 taken into account ratably over the five-taxable-year period
7 beginning with the first taxable year beginning on or after January
8 1, 1997.

9 (c) (1) If a taxpayer has, at any time, made an election for
10 federal *income tax* purposes under Section 475(e) of the Internal
11 Revenue Code, relating to election of mark to market for dealers
12 in commodities, to have Section 475 of the Internal Revenue Code
13 apply, Section 475 of the Internal Revenue Code shall apply to that
14 dealer in commodities for state purposes, a separate election for
15 state purposes shall not be allowed ~~under paragraph (3) of~~
16 ~~subdivision (e) of Section 17024.5~~, and the federal election shall
17 be binding for purposes of this part.

18 (2) If a taxpayer fails to make, or has not previously made, an
19 election for federal *income tax* purposes under Section 475(e) of
20 the Internal Revenue Code, relating to election of mark to market
21 for dealers in commodities, to have Section 475 of the Internal
22 Revenue Code apply, an election under Section 475(e) of the
23 Internal Revenue Code shall not be allowed for state purposes,
24 Section 475 of the Internal Revenue Code shall not apply to that
25 dealer in commodities for state purposes, and a separate election
26 for state purposes shall not be allowed ~~under paragraph (3) of~~
27 ~~subdivision (e) of Section 17024.5~~.

28 (d) (1) If a taxpayer has, at any time, made an election for
29 federal *income tax* purposes under Section 475(f)(1) of the
30 Internal Revenue Code, relating to election of mark to market for
31 traders in securities, to have Section 475 of the Internal Revenue
32 Code apply to a trade or business, Section 475 of the Internal
33 Revenue Code shall apply to that trader in securities for state
34 purposes with respect to that trade or business, a separate election
35 for state purposes with respect to that trade or business shall not be
36 allowed ~~under paragraph (3) of subdivision (e) of Section 17024.5~~,
37 and the federal election shall be binding for purposes of this part.

38 (2) If a taxpayer fails to make, or has not previously made, an
39 election for federal *income tax* purposes under Section 475(f)(1)
40 of the Internal Revenue Code, relating to election of mark to



1 market for traders in securities, to have Section 475 of the Internal
2 Revenue Code apply to a trade or business, an election under
3 Section 475(f)(1) of the Internal Revenue Code shall not be
4 allowed for state purposes with respect to that trade or business,
5 Section 475 of the Internal Revenue Code shall not apply to that
6 trader in securities for state purposes with respect to that trade or
7 business, and a separate election for state purposes shall not be
8 allowed ~~under paragraph (3) of subdivision (e) of Section 17024.5.~~

9 (e) (1) If a taxpayer has, at any time, made an election for
10 federal *income tax* purposes under Section 475(f)(2) of the
11 Internal Revenue Code, relating to election of mark to market for
12 traders in commodities, to have Section 475 of the Internal
13 Revenue Code apply to a trade or business, Section 475 of the
14 Internal Revenue Code shall apply to that trader in commodities
15 for state purposes with respect to that trade or business, a separate
16 election for state purposes with respect to that trade or business
17 shall not be allowed ~~under paragraph (3) of subdivision (e) of~~
18 ~~Section 17024.5,~~ and the federal election with respect to that trade
19 or business shall be binding for purposes of this part.

20 (2) If a taxpayer fails to make, or has not previously made, an
21 election for federal *income tax* purposes under Section 475(f)(2)
22 of the Internal Revenue Code, relating to election of mark to
23 market for traders in commodities, to have Section 475 of the
24 Internal Revenue Code apply to a trade or business, an election
25 under Section 475(f)(2) of the Internal Revenue Code shall not be
26 allowed for state purposes with respect to that trade or business,
27 Section 475 of the Internal Revenue Code shall not apply to that
28 trader in commodities for state purposes with respect to that trade
29 or business, and a separate election for state purposes with respect
30 to that trade or business shall not be allowed ~~under paragraph (3)~~
31 ~~of subdivision (e) of Section 17024.5.~~

32 (f) (1) An election under Section 475(e) or (f) of the Internal
33 Revenue Code made for federal *income tax* purposes with respect
34 to a taxable year beginning before January 1, 1998, shall be treated
35 as having been made for state purposes with respect to the first
36 taxable year beginning on or after January 1, 1998.

37 (2) Section 1001(d)(4)(B) of the Taxpayer Relief Act of 1997
38 ~~(P.L. (Public Law 105-34),~~ relating to the effective date for
39 election of mark to market by securities traders and traders and
40 dealers in commodities, is modified to provide that the



1 requirement for timely identification shall be treated as timely
2 made for state purposes if that identification is treated as timely
3 made for federal *income tax* purposes, and the amount taken into
4 account under Section 481 of the Internal Revenue Code of 1986
5 shall be taken into account ratably over the four-taxable-year
6 period beginning with the first taxable year beginning on or after
7 January 1, 1998.

8 *SEC. 16. Section 17751 of the Revenue and Taxation Code is*
9 *amended to read:*

10 17751. Section 646 of the Internal Revenue Code, relating to
11 certain revocable trusts treated as part of estate, is modified as
12 follows:

13 (a) An election under Section 646(a) of the Internal Revenue
14 Code for federal *income tax* purposes shall be treated for purposes
15 of this part as an election made by the executor, if any, of the estate
16 and the trustee of the qualified revocable trust under Section
17 646(a) of the Internal Revenue Code for state purposes and a
18 separate election ~~under paragraph (3) of subdivision (e) of Section~~
19 ~~17024.5~~ shall not be allowed.

20 (b) If the executor, if any, of the estate and the trustee of a
21 qualified revocable trust fail to make an election under Section
22 646(a) of the Internal Revenue Code for federal *income tax*
23 purposes with respect to that qualified revocable trust, that trust
24 shall be treated and taxed for purposes of this part as a separate
25 trust, an election under Section 646(a) of the Internal Revenue
26 Code for state purposes with respect to that trust shall not be
27 allowed, and a separate election ~~under paragraph (3) of~~
28 ~~subdivision (e) of Section 17024.5~~ shall not be allowed with
29 respect to that trust.

30 *SEC. 17. Section 17752 of the Revenue and Taxation Code is*
31 *amended to read:*

32 17752. Section 663 of the Internal Revenue Code, relating to
33 special rules applicable to Sections 661 and 662, is modified as
34 follows:

35 (a) Section 663(b) of the Internal Revenue Code, relating to
36 distributions in the first 65 days of the taxable year, is modified as
37 follows:

38 (1) An election under Section 663(b) of the Internal Revenue
39 Code for federal *income tax* purposes shall be treated for purposes
40 of this part as an election made by the executor of the estate or the



1 fiduciary of the trust, as the case may be, under Section 663(b) of
2 the Internal Revenue Code for state purposes and a separate
3 election ~~under paragraph (3) of subdivision (e) of Section 17024.5~~
4 shall not be allowed.

5 (2) If the executor of the estate or the fiduciary of the trust, as
6 the case may be, fails to make an election under Section 663(b) of
7 the Internal Revenue Code for federal *income tax* purposes with
8 respect to an amount properly paid or credited within 65 days of
9 the taxable year, that amount shall not be considered for purposes
10 of this part as having been paid or credited on the last day of the
11 preceding taxable year, an election under Section 663(b) of the
12 Internal Revenue Code for state purposes with respect to that
13 amount shall not be allowed, and a separate election ~~under~~
14 ~~paragraph (3) of subdivision (e) of Section 17024.5~~ shall not be
15 allowed with respect to that amount.

16 (b) Section 663(c) of the Internal Revenue Code, relating to
17 separate shares treated as separate estates or trusts, is modified as
18 follows:

19 (1) An election under Section 663(c) of the Internal Revenue
20 Code for federal *income tax* purposes shall be treated for purposes
21 of this part as an election made by the executor of the estate or the
22 fiduciary of the trust, as the case may be, under Section 663(c) of
23 the Internal Revenue Code for state purposes and a separate
24 election ~~under paragraph (3) of subdivision (e) of Section 17024.5~~
25 shall not be allowed.

26 (2) If the executor of the estate or the fiduciary of the trust, as
27 the case may be, fails to make an election under Section 663(c) of
28 the Internal Revenue Code for federal *income tax* purposes with
29 respect to separate shares treated as separate estates or trusts, an
30 election under Section 663(c) of the Internal Revenue Code for
31 state purposes shall not be allowed, and a separate election ~~under~~
32 ~~paragraph (3) of subdivision (e) of Section 17024.5~~ shall not be
33 allowed.

34 *SEC. 18. Section 17760.5 of the Revenue and Taxation Code*
35 *is amended to read:*

36 17760.5. Section 685 of the Internal Revenue Code, relating
37 to treatment of funeral trusts, is modified as follows:

38 (a) Section 685(a) of the Internal Revenue Code is modified to
39 read: In the case of a qualified funeral trust—



1 (1) Subparts B, C, D, and E of Subchapter J of Chapter 1 of
2 Subtitle A of the Internal Revenue Code shall not apply.

3 (2) No credit for personal exemption shall be allowed under
4 Section 17054 or Section 17733.

5 (b) Section 685(b) of the Internal Revenue Code is modified as
6 follows:

7 (1) An election under Section 685(b)(5) of the Internal
8 Revenue Code for federal *income tax* purposes shall be treated for
9 purposes of this part as an election made by the trustee of the
10 qualified funeral trust under Section 685(b)(5) of the Internal
11 Revenue Code for state purposes and a separate election ~~under~~
12 ~~paragraph (3) of subdivision (e) of Section 17024.5~~ shall not be
13 allowed.

14 (2) If the trustee of a qualified funeral trust fails to make an
15 election under Section 685(b)(5) of the Internal Revenue Code for
16 federal *income tax* purposes with respect to a qualified funeral
17 trust, that trust shall be treated for purposes of this part as owned
18 under Subpart E of the Internal Revenue Code by the purchasers
19 of the contracts described in Section 685(b)(1) of the Internal
20 Revenue Code, an election under Section 685(b)(5) of the Internal
21 Revenue Code for state purposes with respect to that trust shall not
22 be allowed, and a separate election ~~under paragraph (3) of~~
23 ~~subdivision (e) of Section 17024.5~~ shall not be allowed with
24 respect to that trust.

25 (c) Section 685(d) of the Internal Revenue Code is modified to
26 read: Subdivision (e) of Section 17041 shall be applied to each
27 qualified funeral trust by treating each beneficiary's interest in
28 each qualified funeral trust as a separate trust.

29 (d) The Franchise Tax Board may, by forms and instructions,
30 provide rules for simplified reporting of all trusts having a single
31 trustee consistent with the rules prescribed by the Secretary of the
32 Treasury under Section 685 of the Internal Revenue Code.

33 (e) This section shall apply to taxable years ending after August
34 5, 1997.

35 (f) The amendments made to this section by the act adding this
36 subdivision shall apply to taxable years beginning on or after
37 January 1, 1998.

38 *SEC. 19. Section 23038.5 of the Revenue and Taxation Code*
39 *is amended to read:*



1 23038.5. (a) Section 7704 of the Internal Revenue Code,
2 relating to certain publicly traded partnerships treated as
3 corporations, shall apply, except as otherwise provided.

4 (b) (1) Section 7704(a) of the Internal Revenue Code shall not
5 apply to an electing 1987 partnership.

6 (2) For purposes of this subdivision, the term “electing 1987
7 partnership” means any publicly traded partnership if all of the
8 following apply:

9 (A) The partnership is an existing partnership (as defined in
10 Section 10211(c)(2) of the Revenue Reconciliation Act of 1987).

11 (B) Section 7704(a) of the Internal Revenue Code has not
12 applied (and without regard to Section 7704(c)(1) of the Internal
13 Revenue Code would not have applied) to that partnership for all
14 prior taxable years beginning after December 31, 1987, and before
15 January 1, 1998.

16 (C) (i) The partnership has made the election under Section
17 7704(g)(1)(C) of the Internal Revenue Code (as added by Public
18 Law 105-34) for federal *income* tax purposes.

19 (ii) The election for federal *income* tax purposes described in
20 clause (i) shall be treated as a binding election and a separate
21 election for state tax purposes shall not be allowed ~~under~~
22 ~~paragraph (3) of subdivision (c) of Section 23051.5.~~

23 (iii) The election for federal *income* tax purposes described in
24 clause (i) shall be treated as a binding consent to the application of
25 the tax imposed under paragraph (3) and a separate election for
26 state tax purposes shall not be allowed ~~under paragraph (3) of~~
27 ~~subdivision (c) of Section 23051.5.~~

28 (D) A partnership which, but for this subparagraph, would be
29 treated as an electing 1987 partnership shall cease to be so treated
30 (and the election under subparagraph (C) shall cease to be in effect)
31 as of the first day after December 31, 1997, that the partnership is
32 no longer treated as an electing 1987 partnership for federal tax
33 purposes (and the election under Section 7704(g)(1)(C) of the
34 Internal Revenue Code (as added by Public Law 105-34) ceases to
35 be in effect for federal *income* tax purposes).

36 (3) (A) There is hereby imposed for each taxable year
37 beginning on or after January 1, 1998, on the gross income of each
38 electing 1987 partnership a tax equal to 1 percent of that
39 partnership’s gross income from all sources reportable to this state,
40 taking into account Section 25101 and any election under Section



1 25110, attributable to the active conduct of trades and businesses
2 by the partnership.

3 (B) The tax shall be due and payable on the date the return of
4 the partnership is required to be filed under Section 18633, shall
5 be collected and refunded in the same manner as other taxes
6 imposed by this part, and shall be subject to interest and applicable
7 penalties.

8 (C) For purposes of this paragraph, if a partnership is a partner
9 in another partnership, the gross income referred to in
10 subparagraph (A) shall include the partnership's distributive share
11 of the gross income of the other partnership from all sources
12 reportable to this state, taking into account Section 25101 and any
13 election under Section 25110, attributable to the active conduct of
14 trades and businesses of that other partnership. A similar rule shall
15 apply in the case of lower-tiered partnerships.

16 (D) The tax imposed by this paragraph shall be treated as
17 imposed by this part other than for purposes of determining the
18 amount of any credit allowable under this part.

19 (4) The provisions of this subdivision shall apply to the taxable
20 year for which the election described in clause (i) of subparagraph
21 (C) of paragraph (2) is made for federal *income tax* purposes and
22 all subsequent taxable years unless revoked by the partnership for
23 federal *income tax* purposes. Any revocation made for federal
24 *income tax* purposes shall be treated as a binding revocation under
25 this part, but, once so revoked, may not be reinstated and a separate
26 revocation for state purposes shall not be allowed under paragraph
27 ~~(3) of subdivision (e) of Section 23051.5.~~

28 (c) The amendment made to this section by the act adding this
29 subdivision shall apply to taxable years beginning on or after
30 January 1, 1998.

31 *SEC. 20. Section 23051.5 of the Revenue and Taxation Code*
32 *is amended to read:*

33 23051.5. (a) (1) Unless otherwise specifically provided, the
34 terms "Internal Revenue Code," "Internal Revenue Code of
35 1954," or "Internal Revenue Code of 1986," for purposes of this
36 part, mean Title 26 of the United States Code, including all
37 amendments thereto, as enacted on the specified date for the
38 applicable taxable year as defined in paragraph (1) of subdivision
39 (a) of Section 17024.5.



1 (2) Unless otherwise specifically provided, for federal laws
2 enacted on or after January 1, 1987, and on or before the specified
3 date for the taxable year, uncodified provisions that relate to
4 provisions of the Internal Revenue Code that are incorporated for
5 purposes of this part, shall be applicable to the same taxable years
6 as the incorporated provisions.

7 (3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle
8 H (Repeal of Expired or Obsolete Provisions) of the Revenue
9 Reconciliation Act of 1990 (Public Law 101-508) modified
10 numerous provisions of the Internal Revenue Code and provisions
11 of prior federal acts, some of which are incorporated by reference
12 into this part. Unless otherwise provided, the provisions described
13 in the preceding sentence, to the extent that they modify provisions
14 that are incorporated into this part, are declaratory of existing law
15 and shall be applied in the same manner and for the same periods
16 as specified in the Revenue Reconciliation Act of 1990.

17 (b) Unless otherwise specifically provided, when applying the
18 Internal Revenue Code for purposes of this part, a reference to any
19 of the following shall not be applicable for purposes of this part:

20 (1) Domestic International Sales Corporations (DISC), as
21 defined in Section 992(a) of the Internal Revenue Code.

22 (2) Foreign Sales Corporations (FSC), as defined in Section
23 922(a) of the Internal Revenue Code.

24 (3) A personal holding company, as defined in Section 542 of
25 the Internal Revenue Code.

26 (4) A foreign personal holding company, as defined in Section
27 552 of the Internal Revenue Code.

28 (5) A foreign investment company, as defined in Section
29 1246(b) of the Internal Revenue Code.

30 (6) A foreign trust as defined in Section 679 of the Internal
31 Revenue Code.

32 (7) Foreign income taxes and foreign income tax credits.

33 (8) Federal tax credits and carryovers of federal tax credits.

34 (c) (1) The provisions contained in Sections 41 to 44,
35 inclusive, and Section 172 of the Tax Reform Act of 1984 (Public
36 Law 98-369), relating to treatment of debt instruments, shall not
37 be applicable for taxable years beginning before January 1, 1987.

38 (2) The provisions contained in Public Law 99-121, relating to
39 the treatment of debt instruments, shall not be applicable for
40 taxable years beginning before January 1, 1987.



1 (3) For taxable years beginning on and after January 1, 1987,
2 the provisions referred to by paragraphs (1) and (2) shall be
3 applicable for purposes of this part in the same manner and with
4 respect to the same obligations as the federal provisions, except as
5 otherwise provided in this part.

6 (d) When applying the Internal Revenue Code for purposes of
7 this part, regulations promulgated in final form or issued as
8 temporary regulations by “the secretary” shall be applicable as
9 regulations issued under this part to the extent that they do not
10 conflict with this part or with regulations issued by the Franchise
11 Tax Board.

12 (e) Whenever this part allows a taxpayer to make an election *on*
13 *or after January 1, 2002, in taxable years beginning on or after*
14 *January 1, 2002*, the following rules shall apply:

15 (1) A proper election *for federal income tax purposes* filed with
16 the Internal Revenue Service in accordance with the Internal
17 Revenue Code or regulations issued by “the secretary” shall ~~be~~
18 ~~deemed to be a proper~~ *treated as an election* for purposes of this
19 *part and a separate election for state purposes shall not be*
20 *allowed*, unless otherwise expressly provided in this part or in
21 regulations issued by the Franchise Tax Board.

22 (2) A copy of that election shall be furnished to the Franchise
23 Tax Board upon request.

24 ~~(3) To obtain treatment other than that elected for federal~~
25 ~~purposes, a separate election shall be filed with the Franchise Tax~~
26 ~~Board at the time and in the manner which may be required by the~~
27 ~~Franchise Tax Board. If the taxpayer does not make a proper~~
28 ~~election for federal income tax purposes a separate election for~~
29 ~~purposes of this part shall not be allowed, unless otherwise~~
30 ~~provided.~~

31 (f) Whenever this part allows or requires a taxpayer to file an
32 application or seek consent, the rules set forth in subdivision (e)
33 shall apply to that application or consent.

34 (g) When applying the Internal Revenue Code for purposes of
35 determining the statute of limitations under this part, any reference
36 to a period of three years shall be modified to read four years for
37 purposes of this part.

38 (h) When applying, for purposes of this part, any section of the
39 Internal Revenue Code or any applicable regulation thereunder, all
40 of the following shall apply:



1 (1) For purposes of Chapter 2 (commencing with Section
2 23101), Chapter 2.5 (commencing with Section 23400), and
3 Chapter 3 (commencing with Section 23501), the term “taxable
4 income” shall mean “net income.”

5 (2) For purposes of Article 2 (commencing with Section
6 23731) of Chapter 4, the term “taxable income” shall mean
7 “unrelated business taxable income,” as defined by Section
8 23732.

9 (3) Any reference to “subtitle,” “Chapter 1,” or “chapter”
10 shall mean this part.

11 (4) The provisions of Section 7806 of the Internal Revenue
12 Code, relating to construction of title, shall apply.

13 (5) Any provision of the Internal Revenue Code that becomes
14 operative on or after the specified date for that taxable year shall
15 become operative on the same date for purposes of this part.

16 (6) Any provision of the Internal Revenue Code that becomes
17 inoperative on or after the specified date for that taxable year shall
18 become inoperative on the same date for purposes of this part.

19 (7) Due account shall be made for differences in federal and
20 state terminology, effective dates, substitution of “Franchise Tax
21 Board” for “secretary” when appropriate, and other obvious
22 differences.

23 (8) Any provision of the Internal Revenue Code that refers to
24 a “corporation” shall, when applicable for purposes of this part,
25 include a “bank,” as defined by Section 23039.

26 (i) Any reference to a specific provision of the Internal
27 Revenue Code shall include modifications of that provision, if any,
28 in this part.

29 *SEC. 21. Section 23701s of the Revenue and Taxation Code is*
30 *amended to read:*

31 23701s. (a) An employee-funded pension trust described in
32 Section 501(c)(18) of the Internal Revenue Code, except as
33 otherwise provided.

34 (b) The last sentence in Section 501(c)(18) of the Internal
35 Revenue Code, *as amended by Title VI of the Economic Growth*
36 *and Tax Relief Reconciliation Act of 2001 (Public Law 107-16),*
37 relating to excess contributions under Section 4979, shall not
38 apply.

39 *SEC. 22. Section 23705 of the Revenue and Taxation Code is*
40 *amended to read:*



1 23705. (a) (1) An organization described in Section 23701i
2 (voluntary employee’s beneficiary associations) or 23701q
3 (qualified group legal service plans) which is part of a plan of an
4 employer shall not be exempt from tax under Section 23701,
5 unless that plan meets the requirements of Section 505(b) of the
6 Internal Revenue Code, *as amended by Title VI of the Economic
7 Growth and Tax Relief Reconciliation Act of 2001 (Public Law
8 107-16)*.

9 (2) Paragraph (1) shall not apply to any organization described
10 in Section 505(a)(2) of the Internal Revenue Code.

11 (b) A copy of any notice filed with the Secretary of the
12 Treasury, pursuant to Section 505(c) of the Internal Revenue Code,
13 relating to application for tax-exempt status, shall be filed at the
14 same time and in the same manner with the Franchise Tax Board.

15 *SEC. 23. Section 23711 of the Revenue and Taxation Code is
16 amended to read:*

17 23711. Section 529 of the Internal Revenue Code, *as amended
18 by Section 402 of the Economic Growth and Tax Relief
19 Reconciliation Act of 2001 (Public Law 107-16)* relating to
20 qualified state tuition programs, shall apply, except as otherwise
21 provided.

22 (a) Section 529(a) of the Internal Revenue Code is modified as
23 follows:

24 (1) By substituting the phrase “under Part 10 (commencing
25 with Section 17001) and this part” in lieu of the phrase “under this
26 subtitle.”

27 (2) By substituting “Article 2 (commencing with Section
28 23731)” in lieu of “section 511.”

29 (b) A copy of the report required to be filed with the Secretary
30 of the Treasury under Section 529(d) of the Internal Revenue Code
31 shall be filed with the Franchise Tax Board at the same time and
32 in the same manner as specified in that section.

33 *SEC. 24. Section 23712 of the Revenue and Taxation Code is
34 amended to read:*

35 23712. Section 530 of the Internal Revenue Code, *as
36 amended by Section 401 of the Economic Growth and Tax Relief
37 Reconciliation Act of 2001 (Public Law 107-16)* relating to
38 education individual retirement accounts, shall apply, except as
39 otherwise provided.



1 (a) Section 530(a) of the Internal Revenue Code is modified as
2 follows:

3 (1) By substituting the phrase “under Part 10 (commencing
4 with Section 17001) and this part” in lieu of the phrase “under this
5 subtitle.”

6 (2) By substituting “Article 2 (commencing with Section
7 23731)” in lieu of “section 511.”

8 (b) *For taxable years beginning before January 1, 2002,*
9 Section 530(b)(1) of the Internal Revenue Code, relating to the
10 definition of education individual retirement account, is modified
11 to additionally require that upon the date that the designated
12 beneficiary becomes 30 years of age, any balance to the credit of
13 the beneficiary shall be distributed within 30 days after the date the
14 beneficiary becomes 30 years of age to that beneficiary.

15 (c) Section 530(d) of the Internal Revenue Code is modified as
16 follows:

17 (1) By substituting the phrase “under Part 10 (commencing
18 with Section 17001) in the manner as provided in Section 72(b) of
19 the Internal Revenue Code, as modified by Part 10” in lieu of the
20 phrase “in the manner as provided in Section 72(b)” in Section
21 530(d)(1) of the Internal Revenue Code.

22 (2) (A) A taxpayer that has elected to waive the application of
23 Section 530(d)(2) of the Internal Revenue Code for federal *income tax*
24 purposes shall be treated as having waived the application of
25 that paragraph for state purposes, a separate election for state
26 purposes shall not be allowed under paragraph (3) of subdivision
27 (e) of Section 17024.5 or paragraph (3) of subdivision (e) of
28 Section 23051.5, and the federal election shall be binding for
29 purposes of Part 10 (commencing with Section 17001) and this
30 part.

31 (B) If a taxpayer fails to make an election under Section
32 530(d)(2)(C) of the Internal Revenue Code for federal *income tax*
33 purposes to waive the application of Section 530(d)(2) of the
34 Internal Revenue Code, an election under Section 530(d)(2)(C) of
35 the Internal Revenue Code shall not be allowed for state purposes,
36 Section 530(d)(2)(A) and (B) of the Internal Revenue Code shall
37 apply for state purposes, and a separate election for state purposes
38 shall not be allowed under paragraph (3) of subdivision (e) of
39 Section 17024.5.



1 (3) (A) By substituting the phrase “tax imposed by Part 10
2 (commencing with Section 17001)” in lieu of the phrase “tax
3 imposed by this chapter” in Section 530(d)(4)(A) of the Internal
4 Revenue Code.

5 (B) By substituting the phrase “increased by 2¹/₂ percent” in
6 lieu of the phrase “increased by 10 percent” in Section
7 530(d)(4)(A) of the Internal Revenue Code.

8 (C) By substituting the phrase “shall be included in the
9 contributor’s gross income under Part 10 (commencing with
10 Section 17001) or this part” in lieu of the phrase “shall be included
11 in gross income” in Section 530(d)(4)(C) of the Internal Revenue
12 Code.

13 (d) For purposes of Part 10 (commencing with Section 17001)
14 and this part, in the case of a custodial account treated as a trust by
15 reason of Section 530(g) of the Internal Revenue Code, the
16 custodian of that account shall be treated as the trustee thereof.

17 (e) A copy of the report, which is required to be filed with the
18 Secretary of the Treasury under Section 530(h) of the Internal
19 Revenue Code, shall be filed with the Franchise Tax Board at the
20 same time and in the same manner as specified in that section.

21 *SEC. 25. Section 23800.5 of the Revenue and Taxation Code*
22 *is amended to read:*

23 23800.5. (a) Section 1361(b)(2)(A) of the Internal Revenue
24 Code, relating to ineligible corporation defined, shall not apply
25 and in lieu thereof, for purposes of Section 1361(b)(1) of the
26 Internal Revenue Code, Part 10 (commencing with Section
27 17001), Part 10.2 (commencing with Section 18401), and this part,
28 “ineligible corporation” shall include a savings and loan
29 association, bank, or financial corporation which uses the reserve
30 method of accounting for bad debts described in Section 24348.

31 (b) Section 1361(b)(3) of the Internal Revenue Code, relating
32 to treatment of certain wholly owned subsidiaries, is modified as
33 follows:

34 (1) For purposes of Part 10 (commencing with Section 17001),
35 Part 10.2 (commencing with Section 18401), and this part:

36 (A) Section 1361(b)(3)(A)(i) of the Internal Revenue Code
37 shall apply, except as provided in subparagraph (B).

38 (B) There is hereby imposed a tax annually in an amount equal
39 to the applicable amount specified in paragraph (1) of subdivision
40 (d) of Section 23153 on a qualified Subchapter S subsidiary that



1 is incorporated under the laws of this state, qualified to transact
2 intrastate business in this state pursuant to Chapter 21
3 (commencing with Section 2100) of Division 1 of Title 1 of the
4 Corporations Code, or doing business in this state.

5 (C) Every qualified Subchapter S subsidiary described in
6 subparagraph (B) shall be subject to the tax imposed under
7 subparagraph (B) from the earlier of the date of incorporation,
8 qualification, or commencement of business in this state, until the
9 effective date of dissolution or withdrawal as provided in Section
10 23331, or, if later, the date the corporation ceases to do business
11 in this state.

12 (2) For purposes of Part 10 (commencing with Section 17001),
13 Part 10.2 (commencing with Section 18401), and this part:

14 (A) Section 1361(b)(3)(A)(ii) of the Internal Revenue Code
15 shall not apply and, in lieu thereof, subparagraph (B) shall apply
16 and all references to Section 1361(b)(3)(A)(ii) of the Internal
17 Revenue Code shall be treated as a reference to subparagraph (B).

18 (B) All activities, assets, liabilities, including liability for the
19 tax imposed under this subdivision, and items of income,
20 deduction, and credit of a qualified Subchapter S subsidiary shall
21 be treated as activities (including activities for purposes of Section
22 23101), assets, liabilities, and those items, as the case may be, of
23 the “S corporation.”

24 (3) Section 1361(b)(3)(B) of the Internal Revenue Code is
25 modified to include the following requirements in addition to the
26 requirements contained therein:

27 (A) The “S corporation” has in effect a valid election to treat
28 the corporation as a qualified Subchapter S subsidiary for federal
29 *income tax* purposes.

30 (B) An election made by the “S corporation” under Section
31 1361(b)(3)(B)(ii) of the Internal Revenue Code to treat the
32 corporation as a qualified Subchapter S subsidiary for federal
33 *income tax* purposes shall be treated for purposes of this part as an
34 election made by the “S corporation” under this subdivision and
35 a separate election ~~under paragraph (3) of subdivision (e) of~~
36 ~~Section 23051.5~~ shall not be allowed.

37 (C) No election under this subdivision shall be allowed unless
38 the “S corporation” has made the election under Section
39 1361(b)(3)(B)(ii) of the Internal Revenue Code to treat the



1 corporation as a qualified Subchapter S subsidiary for federal
2 *income tax* purposes.

3 (c) Section 1361(c)(6) of the Internal Revenue Code, relating
4 to certain exempt organizations permitted as shareholders, is
5 modified by substituting a reference to Section 17631 or Section
6 23701d in lieu of the reference to Section 501(c)(3) of the Internal
7 Revenue Code and by substituting a reference to Section 17631 or
8 Section 23701 in lieu of the reference to Section 501(a) of the
9 Internal Revenue Code.

10 (d) Section 1361(e)(1)(B)(ii) of the Internal Revenue Code,
11 relating to certain trusts not eligible, is modified by substituting
12 “under Part 10 (commencing with Section 17001) or this part” in
13 lieu of “under this subtitle.”

14 (e) Section 1361(e)(3) of the Internal Revenue Code, relating
15 to election, is modified to include the following provisions:

16 (1) An election made by the trustee under Section 1361(e) of
17 the Internal Revenue Code to be an electing small business trust for
18 federal *income tax* purposes shall be treated for purposes of this
19 part as an election made by the trustee under this subdivision and
20 a separate election ~~under paragraph (3) of subdivision (e) of~~
21 ~~Section 23051.5~~ shall not be allowed. Any election made shall
22 apply to the taxable year of the trust for which made and to all
23 subsequent taxable years of the trust, unless revoked with the
24 consent of the Franchise Tax Board.

25 (2) No election under this subdivision shall be allowed unless
26 the trustee has made the election under Section 1361(e) of the
27 Internal Revenue Code to be an electing small business trust for
28 federal *income tax* purposes.

29 *SEC. 26. Section 23801 of the Revenue and Taxation Code is*
30 *amended to read:*

31 23801. (a) ~~(1) A—~~*Except as other wise provided, a*
32 *corporation may not elect to be treated as an “S corporation”*
33 ~~*unless it*~~ *that has in effect for federal income tax purposes a valid*
34 *election under Section 1362(a) of the Internal Revenue Code for*
35 ~~*the same year*~~ *shall be an ‘S’ corporation for purposes of Part 10*
36 *(commencing with Section 17001), Part 10.2 (commencing with*
37 *Section 18401), and this part.*

38 ~~(2) For taxable years beginning in 1987, the following shall~~
39 ~~apply:~~



1 ~~(A) A corporation that has in effect a valid federal election for~~
2 ~~the taxable year beginning in 1987, shall be deemed to have elected~~
3 ~~to be treated as an “S corporation” for purposes of this part, unless~~
4 ~~that corporation elects on its return to continue to be treated as a~~
5 ~~“C corporation” for purposes of this part.~~

6 ~~(B) A corporation to which subparagraph (A) applies, but is not~~
7 ~~required to file a return under this part, may elect to be treated as~~
8 ~~a “C corporation” for purposes of this part in the form and in the~~
9 ~~manner as the Franchise Tax Board may prescribe.~~

10 ~~(C) A corporation that is deemed to have elected to be treated~~
11 ~~as an “S corporation” under subparagraph (A) shall, for purposes~~
12 ~~of applying the provisions of Section 1374 of the Internal Revenue~~
13 ~~Code, relating to tax imposed on certain built-in gains, and Section~~
14 ~~1375 of the Internal Revenue Code, relating to tax imposed on~~
15 ~~passive investment income, be deemed to have made the election~~
16 ~~to be treated as an “S corporation” on the same date as the date of~~
17 ~~its federal election under Section 1362(a) of the Internal Revenue~~
18 ~~Code.~~

19 ~~(3) For taxable years beginning in 1988 or 1989, the following~~
20 ~~shall apply:~~

21 ~~(A) A corporation that had in effect a valid federal election for~~
22 ~~the preceding year, but was a “C corporation” for purposes of this~~
23 ~~part for that preceding year, may elect to be treated as an “S~~
24 ~~corporation” for purposes of this part by making an election in~~
25 ~~accordance with the provisions of Section 1362 of the Internal~~
26 ~~Revenue Code in the form and in the manner as the Franchise Tax~~
27 ~~Board may prescribe.~~

28 ~~(B) A corporation that did not have in effect a valid federal~~
29 ~~election for the preceding year and that makes a federal election~~
30 ~~for the taxable year under Section 1362(a) of the Internal Revenue~~
31 ~~Code shall be deemed to have made an election to be treated as an~~
32 ~~“S corporation” for purposes of this part on the same date as the~~
33 ~~date of its federal election, unless that corporation elects on its~~
34 ~~return to continue to be treated as a “C corporation” for purposes~~
35 ~~of this part.~~

36 ~~(C) A corporation to which subparagraph (B) applies, but is not~~
37 ~~required to file a return under this part, may elect to be treated as~~
38 ~~a “C corporation” for purposes of this part in a form and manner~~
39 ~~as the Franchise Tax Board may prescribe.~~



1 ~~(D) A corporation that elects to be treated as an “S~~
2 ~~corporation” under subparagraph (A) for a taxable year beginning~~
3 ~~in 1988 shall, for purposes of applying the provisions of Section~~
4 ~~1374 of the Internal Revenue Code, relating to tax imposed on~~
5 ~~certain built-in gains, and Section 1375 of the Internal Revenue~~
6 ~~Code, relating to tax imposed on passive investment income, be~~
7 ~~deemed to have made the election to be treated as an “S~~
8 ~~corporation” on the same date as the date of its federal election~~
9 ~~under Section 1362(a) of the Internal Revenue Code.~~

10 ~~(4) For taxable years beginning on or after January 1, 1990, the~~
11 ~~following shall apply:~~

12 ~~(A) An election under Section 1362(a) of the Internal Revenue~~
13 ~~Code, that is first effective for a taxable year beginning on or after~~
14 ~~January 1, 1990, shall be an election to which subdivision (e) of~~
15 ~~Section 23051.5 applies and shall be deemed to have been made~~
16 ~~for purposes of this part on the same date as the date of the federal~~
17 ~~election, unless the corporation files a California election under~~
18 ~~clause (ii) to be treated as a “C corporation” for purposes of this~~
19 ~~part.~~

20 ~~(i) The federal “S” election shall be reported for purposes of~~
21 ~~this part in the form and manner as prescribed by the Franchise Tax~~
22 ~~Board no later than the last date allowed for filing the federal~~
23 ~~election under Section 1362(a) of the Internal Revenue Code for~~
24 ~~that taxable year.~~

25 ~~(ii) The California election to be a “C corporation” may only~~
26 ~~be made by a corporation incorporated in California or qualified~~
27 ~~to do business in California and shall be made in the form and~~
28 ~~manner prescribed by the Franchise Tax Board no later than the last~~
29 ~~date allowed for filing the federal “S” election under Section~~
30 ~~1362(a) of the Internal Revenue Code for that taxable year.~~

31 ~~(B) A corporation that has in effect a valid election under~~
32 ~~Section 1362(a) of the Internal Revenue Code, but is a “C~~
33 ~~corporation” for purposes of this part, may elect to be treated as~~
34 ~~an “S corporation” by making an election in the form and manner~~
35 ~~as prescribed by the Franchise Tax Board at the time required for~~
36 ~~making an “S” election under Section 1362(a) of the Internal~~
37 ~~Revenue Code for that taxable year, unless prohibited from doing~~
38 ~~so by Section 1362(g) of the Internal Revenue Code, relating to~~
39 ~~election after termination.~~



1 ~~(C) In the event a corporation which has in effect a valid~~
2 ~~election under Section 1362(a) of the Internal Revenue Code and~~
3 ~~is not doing business in California becomes subject to this part by~~
4 ~~qualifying to do business in California, the corporation is deemed~~
5 ~~to have made an election to be treated as an “S corporation” for~~
6 ~~the taxable year during which the corporation qualifies to do~~
7 ~~business in California, unless the corporation files a California~~
8 ~~election in accordance with clause (ii) to be treated as a “C~~
9 ~~corporation” for that taxable year.~~

10 ~~(i) The federal “S” election shall be reported for purposes of~~
11 ~~this part within two and one-half months after qualifying to do~~
12 ~~business in California in the form and manner as prescribed by the~~
13 ~~Franchise Tax Board.~~

14 ~~(ii) The California election to be a “C corporation” shall be~~
15 ~~made in the form and manner as prescribed by the Franchise Tax~~
16 ~~Board no later than the following:~~

17 ~~(I) For a taxable year beginning in 1990, two and one-half~~
18 ~~months after qualifying to do business in California.~~

19 ~~(II) For a taxable year beginning on or after January 1, 1991,~~
20 ~~the last date allowed for filing a federal “S” election under Section~~
21 ~~1362(a) of the Internal Revenue Code for that taxable year.~~

22 ~~(D) (i)~~

23 ~~(b) A corporation that is not qualified to do business in~~
24 ~~California, but is treated as an “S corporation” for federal income~~
25 ~~tax purposes, shall be treated as an “S corporation” for purposes~~
26 ~~of Part 10 (commencing with Section 17001), Part 10.2~~
27 ~~(commencing with Section 18401, and this part, and its~~
28 ~~shareholders shall be treated as shareholders of an “S~~
29 ~~corporation.”~~

30 ~~(ii) If a corporation described in clause (i) elected to be treated~~
31 ~~as a “C corporation” under this section prior to its amendment by~~
32 ~~the act adding this paragraph during the 1989–90 Regular Session,~~
33 ~~that election shall be revoked for taxable years beginning on or~~
34 ~~after January 1, 1990. The corporation shall be treated as an “S~~
35 ~~corporation” for purposes of this part, and its shareholders shall~~
36 ~~be treated as shareholders of an “S corporation.”~~

37 ~~(E) For purposes of this section, “qualified to do business in~~
38 ~~California” or “qualifying to do business in California” means~~
39 ~~incorporating or obtaining a certificate of qualification pursuant to~~
40 ~~the Corporations Code.~~



1 ~~(F) For purposes of this section:~~

2 ~~(i) A timely election to be treated as a “C corporation” shall be~~
3 ~~treated as a revocation and Section 1362(g) of the Internal~~
4 ~~Revenue Code, relating to election after termination, shall apply.~~

5 ~~(ii) An untimely election to be treated as a “C corporation”~~
6 ~~shall be null and void and shall not be applied to either the current~~
7 ~~or any subsequent taxable year.~~

8 ~~(5) For taxable years beginning on or after January 1, 1997, the~~
9 ~~provisions of paragraph (4) shall apply, subject to the following~~
10 ~~modifications:~~

11 ~~(A) A corporation corporation” without regard to whether the~~
12 ~~corporation is qualified to do business or is incorporated in this~~
13 ~~state.~~

14 ~~(c) Notwithstanding subdivision (a), a corporation that elects~~
15 ~~“S corporation” status under Section 1362 of the Internal Revenue~~
16 ~~Code for federal income tax purposes but which is not qualified to~~
17 ~~be an “S corporation” under subdivision (a) of Section 23800.5,~~
18 ~~shall not be an “S corporation” for purposes of Part 10~~
19 ~~(commencing with Section 17001), Part 10.2 (commencing with~~
20 ~~Section 18401, and this part.~~

21 ~~(B) (i) A corporation that becomes an “S corporation” for a~~
22 ~~taxable year beginning before January 1, 1997, under the~~
23 ~~provisions of Section 1305 of the Small Business Job Protection~~
24 ~~Act of 1996 (P.L. 104-188) for federal purposes, shall become an~~
25 ~~“S corporation” for purposes of Part 10 (commencing with~~
26 ~~Section 17001) and this part, for its first taxable year beginning on~~
27 ~~or after January 1, 1997, unless a timely election to continue as a~~
28 ~~“C corporation” is made.~~

29 ~~(ii) For purposes of clause (i), an election shall be considered~~
30 ~~timely if made no later than the earlier of the date that is 180 days~~
31 ~~after the date of enactment of the act adding this paragraph or the~~
32 ~~due date, without regard to extensions, of the return for its first~~
33 ~~taxable year beginning on or after January 1, 1997.~~

34 ~~(C) (i) A corporation that makes a valid federal election to be~~
35 ~~an “S corporation” during the period in 1997 before the date of~~
36 ~~enactment of the act adding this paragraph and which would not~~
37 ~~qualify to be an “S corporation” under this part on the date of the~~
38 ~~federal election shall become an “S corporation” for purposes of~~
39 ~~Part 10 (commencing with Section 17001) and this part, for its first~~



1 taxable year beginning on or after January 1, 1997, unless a timely
2 election to continue as a “C corporation” is made.

3 (ii) For purposes of clause (i), an election shall be considered
4 timely if made no later than the earlier of the date that is 180 days
5 after the date of enactment of the act adding this paragraph or the
6 due date, without regard to extensions, of the return for its first
7 taxable year beginning on or after January 1, 1997.

8 (b) If a corporation subject to tax under this part elects to be
9 treated as an “S corporation” and has one or more shareholders
10 who are nonresidents of this state or is a trust with a nonresident
11 fiduciary, each of the following shall be required:

12 (1) Each nonresident shareholder or fiduciary shall file with the
13 return a statement of consent by that shareholder or fiduciary to be
14 subject to the jurisdiction of the State of California to tax the
15 shareholder’s pro rata share of the income attributable to
16 California sources.

17 (2) An “S corporation” shall include in its return for each
18 taxable year a list of shareholders in the form and in the manner
19 prescribed by the Franchise Tax Board.

20 (3) Failure to meet the requirements of this subdivision shall be
21 grounds for retroactive revocation by the Franchise Tax Board of
22 the election pursuant to this chapter.

23 (e)–

24 (d) Except as provided in subdivision (d) (e), a corporation that
25 makes a valid election to be treated as is an “S corporation” for
26 purposes of this part shall not be included in a combined report
27 pursuant to Chapter 17 (commencing with Section 25101).

28 (d)–

29 (e) (1) In cases where the Franchise Tax Board determines that
30 the reported income or loss of a group of commonly owned or
31 controlled corporations (within the meaning of Section 25105),
32 which includes one or more corporations electing to be treated as
33 an “S corporation” under Chapter 4.5 (commencing with Section
34 23800), does not clearly reflect income (or loss) of a member of
35 that group or represents an evasion of tax by one or more members
36 of that group, and the Franchise Tax Board determines that the
37 comparable uncontrolled price method prescribed by regulations
38 pursuant to Section 482 of the Internal Revenue Code cannot
39 practically be applied, the Franchise Tax Board may, in lieu of
40 other methods prescribed by regulations pursuant to Section 482



1 of the Internal Revenue Code, apply methods of unitary
2 combination, pursuant to Article 1 (commencing with Section
3 25101) of Chapter 17, to properly reflect the income or loss of the
4 members of the group.

5 (2) The application of the provisions of this subdivision shall
6 not affect the ~~election~~ *treatment* of any corporation ~~to be treated~~ as
7 an “S corporation.”

8 ~~(e)~~

9 (f) The tax for a “C corporation” for a short year shall be
10 determined in accordance with Chapter 13 (commencing with
11 Section 24631), in lieu of Section 1362(e)(5) of the Internal
12 Revenue Code.

13 ~~(f)~~

14 (g) (1) A termination of a federal election pursuant to Section
15 1362(d) of the Internal Revenue Code, that is not an inadvertent
16 termination pursuant to Section 1362(f) of the Internal Revenue
17 Code, shall simultaneously terminate the “S corporation” election
18 for purposes of Part 10 (commencing with Section 17001), *Part*
19 *10.2 (commencing with Section 18401)*, and this part.

20 (2) A federal termination by revocation shall be effective for
21 purposes of this part and shall be reported to the Franchise Tax
22 Board in the form and manner prescribed by the Franchise Tax
23 Board no later than the last date allowed for filing federal
24 termination for that year under Section 1362(d) of the Internal
25 Revenue Code.

26 ~~(3) A corporation which is qualified to do business in~~
27 ~~California and has in effect a valid “S” election under Section~~
28 ~~1362(a) of the Internal Revenue Code, may revoke its “S” election~~
29 ~~for purposes of this part without revoking its federal election. The~~
30 ~~revocation for purposes of this part shall be made by providing a~~
31 ~~written notification to the Franchise Tax Board in the form and~~
32 ~~manner prescribed by the Franchise Tax Board which includes the~~
33 ~~California corporation number and meets the requirements of~~
34 ~~Section 1362(d)(1) of the Internal Revenue Code.~~

35 ~~(g) For taxable years beginning on or after January 1, 1990, if~~
36 ~~a corporation, which has in effect a valid “S” election under~~
37 ~~Section 1362(a) of the Internal Revenue Code, fails to make a “C~~
38 ~~corporation” election under clause (ii) of subparagraphs (A) and~~
39 ~~(C) of paragraph (4) of subdivision (a) or to terminate by~~
40 ~~revocation under paragraph (3) of subdivision (f), the corporation~~



1 ~~shall be treated as an “S corporation” pursuant to subparagraph~~
2 ~~(A) of paragraph (4) of subdivision (a).~~

3 (h) For taxable years beginning on or after January 1, 1997, for
4 purposes of subparagraph (F) of paragraph (4) of subdivision (a)
5 of this section and Section 1362(g) of the Internal Revenue Code,
6 relating to election after termination, any termination under
7 Section 1362(d) of the Internal Revenue Code or election to be
8 treated as a “C corporation” under subparagraph (A) or (C) of
9 paragraph (4) of subdivision (a), or to terminate by revocation
10 under paragraph (3) of subdivision (f) in a taxable year beginning
11 before January 1, 1997, shall not be taken into account.

12 (i) (1) The provisions of Section 1362(b)(5) of the Internal
13 Revenue Code, relating to authority to treat late elections, etc., as
14 timely, shall apply only for taxable years beginning on or after
15 January 1, 1997, with respect to elections under Section 1362(a)
16 of the Internal Revenue Code for taxable years beginning on or
17 after January 1, 1997.

18 (2) Notwithstanding the provisions of paragraph (1), if for any
19 taxable year beginning on or after January 1, 1987, a corporation
20 fails to qualify as an “S corporation” for federal income tax
21 purposes solely because the federal Form 2553 (Election by a
22 Small Business Corporation) was not filed timely, the corporation
23 shall be treated for purposes of this part as an “S corporation” for
24 the taxable year the “S corporation” election should have been
25 made, and for each subsequent year until terminated, if both of the
26 following conditions are met:

27 (A) The corporation and all of its shareholders reported their
28 income for California tax purposes on original returns consistent
29 with “S corporation” status for the year the “S corporation”
30 election should have been made, and for each subsequent taxable
31 year (if any) until terminated.

32 (B) The corporation and its shareholders have filed with the
33 Internal Revenue Service a federal Form 2553 requesting
34 automatic relief with respect to the late “S corporation” election,
35 in full compliance with the federal Revenue Procedure 1997-48,
36 I.R.B. 1997-43, and have received notification of the acceptance
37 of the untimely filed “S corporation” election from the Internal
38 Revenue Service. A copy of the notification shall be provided to
39 the Franchise Tax Board upon request.



1 (j) The provisions of Section 1362(f) of the Internal Revenue
2 Code, relating to inadvertent invalid elections or terminations,
3 shall apply only for taxable years beginning on or after January 1,
4 1997, with respect to elections under Section 1362(a) of the
5 Internal Revenue Code for taxable years beginning on or after
6 January 1, 1997.

7 *SEC. 27. Section 23802 of the Revenue and Taxation Code is*
8 *amended to read:*

9 23802. (a) Section 1363(a) of the Internal Revenue Code,
10 relating to the taxability of an “S corporation,” shall not be
11 applicable.

12 (b) Corporations qualifying under this chapter shall continue to
13 be subject to the taxes imposed under Chapter 2 (commencing with
14 Section 23101) and Chapter 3 (commencing with Section 23501),
15 except as follows:

16 (1) The tax imposed under Section 23151 or 23501 shall be
17 imposed at a rate of 1¹/₂ percent rather than the rate specified in
18 those sections.

19 (2) In the case of an “S corporation” which is also a financial
20 corporation, the rate of tax specified in paragraph (1) shall be
21 increased by the excess of the rate imposed under Section 23183
22 over the rate imposed under Section 23151.

23 (c) An “S corporation” shall be subject to the minimum
24 franchise tax imposed under Section 23153.

25 (d) (1) For purposes of subdivision (b), an “S corporation”
26 shall be allowed a deduction under Section 24416 or 24416.1
27 (relating to net operating loss deductions), but only with respect to
28 losses incurred during periods in which the corporation ~~had in~~
29 ~~effect a valid election to be treated as~~ is an “S corporation” for
30 purposes of this part.

31 (2) Section 1371(b) of the Internal Revenue Code, relating to
32 denial of carryovers between “C years” and “S years,” shall apply
33 for purposes of the tax imposed under subdivision (b), except as
34 provided in paragraph (1).

35 (3) The provisions of this subdivision shall not affect the
36 amount of any item of income or loss computed in accordance with
37 the provisions of Section 1366 of the Internal Revenue Code,
38 relating to passthrough items to shareholders.

39 (4) For purposes of subdivision (b) of Section 17276, relating
40 to limitations on loss carryovers, losses passed through to



1 shareholders of an “S corporation,” to the extent otherwise
2 allowable without application of that subdivision, shall be fully
3 included in the net operating loss of that shareholder and then that
4 subdivision shall be applied to the entire net operating loss.

5 (e) For purposes of computing the taxes specified in
6 subdivision (b), an “S corporation” shall be allowed a deduction
7 from income for built-in gains and passive investment income for
8 which a tax has been imposed under this part in accordance with
9 the provisions of Section 1374 of the Internal Revenue Code,
10 relating to tax imposed on certain built-in gains, or Section 1375
11 of the Internal Revenue Code, relating to tax imposed on passive
12 investment income.

13 (f) For purposes of computing taxes imposed under this part, as
14 provided in subdivision (b):

15 (1) An “S corporation” shall compute its deductions for
16 amortization and depreciation in accordance with the provisions
17 of Part 10 (commencing with Section 17001) of Division 2.

18 (2) The provisions of Section 465 of the Internal Revenue
19 Code, relating to limitation of deductions to the amount at risk,
20 shall be applied in the same manner as in the case of an individual.

21 (3) (A) The provisions of Section 469 of the Internal Revenue
22 Code, relating to limitations on passive activity losses and credits,
23 shall be applied in the same manner as in the case of an individual.
24 For purposes of the tax imposed under Section 23151 or 23501, as
25 modified by this section, material participation shall be
26 determined in accordance with Section 469(h) of the Internal
27 Revenue Code, relating to certain closely held “C corporations”
28 and personal service corporations.

29 (B) For purposes of this paragraph, the “adjusted gross
30 income” of the “S corporation” shall be equal to its “net
31 income,” as determined under Section 24341 with the
32 modifications required by this subdivision, except that no
33 deduction shall be allowed for contributions allowed by Section
34 24357.

35 (4) The exclusion provided under Section 18152.5 shall not be
36 allowed to an “S corporation.”

37 (g) The provisions of Section 1363(d) of the Internal Revenue
38 Code, relating to recapture of LIFO benefits, shall be modified for
39 purposes of this part to refer to Section 19101 in lieu of Section
40 6601 of the Internal Revenue Code.



1 SEC. 28. Section 23806 of the Revenue and Taxation Code is
2 amended to read:

3 23806. (a) Section 1371(a) of the Internal Revenue Code,
4 relating to application of Subchapter C rules, is modified to
5 provide that, notwithstanding subdivisions (a) and (e) of Sections
6 17024.5 and 23051.5, any election by an “S corporation” or its
7 shareholders under Section 338 of the Internal Revenue Code,
8 relating to certain stock purchases treated as asset acquisitions, for
9 federal *income tax* purposes shall be treated as an election for
10 purposes of Part 10 (commencing with Section 17001, Part 10.2
11 (commencing with Section 18401), and this part and a separate
12 election for state purposes under paragraph (3) of subdivision (e)
13 of Section 17024.5 or 23051.5 shall not be allowed.

14 (b) No election under Section 338 of the Internal Revenue
15 Code, relating to certain stock purchases treated as asset
16 acquisitions, shall be allowed for state purposes unless the “S
17 corporation” or its shareholders made a valid election for federal
18 *income tax* purposes under Section 338 of the Internal Revenue
19 Code.

20 (c) Section 1371 (d) of the Internal Revenue Code shall not
21 apply.

22 ~~(d) (1) Subdivisions (a) and (b) shall apply to any transaction~~
23 ~~occurring on or after January 1, 1998, in a taxable year beginning~~
24 ~~on or after January 1, 1997.~~

25 ~~(2) Subdivision (c) shall apply to taxable years beginning on or~~
26 ~~after January 1, 1997.~~

27 SEC. 29. Section 23811 of the Revenue and Taxation Code is
28 amended to read:

29 23811. Except as otherwise provided in this section, there is
30 hereby imposed a tax on passive investment income attributable to
31 California sources, determined in accordance with the provisions
32 of Section 1375 of the Internal Revenue Code, relating to tax
33 imposed on passive investment income, as modified by this
34 section.

35 (a) The tax imposed under this section shall not be imposed on
36 an “S corporation” that has no excess net passive income for
37 federal *income tax* purposes determined in accordance with
38 Section 1375 of the Internal Revenue Code.



1 (b) (1) The rate of tax shall be equal to the rate of tax imposed
2 under Section 23151 in lieu of Section 11(b) of the Internal
3 Revenue Code.

4 (2) In the case of an “S corporation” which is also a financial
5 corporation, the rate of tax specified in paragraph (1) shall be
6 increased by the excess of the rate imposed under Section 23183
7 over the rate imposed under Section 23151.

8 (c) The provisions of Section 1375(c)(1) of the Internal
9 Revenue Code, relating to credits, shall be modified to provide that
10 the tax imposed under subdivision (a) shall not be reduced by any
11 credits allowed under this part.

12 (d) The term “subchapter C earnings and profits” as used in
13 Sections 1362(d)(3) and 1375 of the Internal Revenue Code shall
14 mean the subchapter C earnings and profits of the corporation
15 attributable to California sources determined under this part,
16 modified as provided in subdivision (e).

17 (e) (1) In the case of a corporation which ~~elects to be treated~~
18 ~~as is~~ an “S corporation” for purposes of this part for its ~~first~~
19 ~~taxable year beginning in 1987, or for its first taxable year for~~
20 which it has in effect a valid federal S election, there shall be
21 allowed as a deduction in determining that corporation’s
22 subchapter C earnings and profits at the close of any taxable year
23 the amount of any consent dividend (as provided in paragraph (2))
24 paid after the close of that taxable year.

25 (2) In the event there is a determination that a corporation
26 described in paragraph (1) has subchapter C earnings and profits
27 at the close of any taxable year, that corporation shall be entitled
28 to distribute a consent dividend to its shareholders. The amount of
29 the consent dividend shall not exceed the difference between the
30 corporation’s subchapter C earnings and profits determined under
31 subdivision (d) at the close of the taxable year with respect to
32 which the determination is made and the corporation’s subchapter
33 C earnings and profits for federal income tax purposes at the same
34 date. A consent dividend must be paid within 90 days of the date
35 of the determination that the corporation has subchapter C
36 earnings and profits. For this purpose, the date of a determination
37 means the effective date of a closing agreement pursuant to Section
38 19441, the date an assessment of tax imposed by this section
39 becomes final, or the date of execution by the corporation of an
40 agreement with the Franchise Tax Board relating to liability for the



1 tax imposed by this section. For purposes of Part 10 (*commencing*
2 *with Section 17001*), Part 10.2 (*commencing with Section 18401*),
3 and this part, a corporation must make the election provided in
4 Section 1368(e)(3) of the Internal Revenue Code for *federal*
5 *income tax purposes* any consent dividend.

6 (3) If a corporation distributes a consent dividend, it shall claim
7 the deduction provided in paragraph (1) by filing a claim therefor
8 with the Franchise Tax Board within 120 days of the date of the
9 determination specified in paragraph (2).

10 (4) The collection of tax imposed by this section from a
11 corporation described in paragraph (2) shall be stayed for 120 days
12 after the date of the determination specified in paragraph (2). If a
13 claim is filed pursuant to paragraph (3), collection of that tax shall
14 be further stayed until the date the claim is acted upon by the
15 Franchise Tax Board.

16 (5) If a claim is filed pursuant to paragraph (3), the running of
17 the statute of limitations on the making of assessments and actions
18 for collection of the tax imposed by this section shall be suspended
19 for a period of two years after the date of the determination
20 specified in paragraph (2).

21 *SEC. 30. Section 24307 of the Revenue and Taxation Code is*
22 *amended to read:*

23 24307. (a) Section 108 of the Internal Revenue Code,
24 relating to income from discharge of indebtedness, shall apply,
25 except as otherwise provided.

26 (b) Section 108(b)(2)(B) of the Internal Revenue Code,
27 relating to general business credit, is modified by substituting
28 “this part” in lieu of “Section 38 (relating to general business
29 credit).”

30 (c) Section 108(b)(2)(G) of the Internal Revenue Code,
31 relating to foreign tax credit carryovers, shall not apply.

32 (d) Section 108(b)(3)(B) of the Internal Revenue Code,
33 relating to credit carryover reduction, is modified by substituting
34 “11.1 cents” in lieu of “33¹/₃ cents” in each place in which it
35 appears. In the case where more than one credit is allowable under
36 this part, the credits shall be reduced on a pro rata basis.

37 (e) Section 108(g)(3)(B) of the Internal Revenue Code,
38 relating to adjusted tax attributes, is modified by substituting “\$9”
39 in lieu of “\$3.”



1 (f) (1) The amendments to Section 108 of the Internal
2 Revenue Code made by Section 13150 of the Revenue
3 Reconciliation Act of 1993 (~~P.L.~~ (*Public Law* 103-66), relating to
4 exclusion from gross income for income from discharge of
5 qualified real property business indebtedness, shall apply to
6 discharges occurring on or after January 1, 1996, in taxable years
7 beginning on or after January 1, 1996.

8 (2) If a taxpayer makes an election for federal income tax
9 purposes under Section 108(c) of the Internal Revenue Code,
10 relating to treatment of discharge of qualified real property
11 business indebtedness, a separate election shall not be allowed
12 ~~under paragraph (3) of subdivision (e) of Section 23051.5~~ and the
13 federal election shall be binding for purposes of this part.

14 (3) If a taxpayer has not made an election for federal income tax
15 purposes under Section 108(c) of the Internal Revenue Code,
16 relating to treatment of discharge of qualified real property
17 business indebtedness, then the taxpayer shall not be allowed to
18 make that election for purposes of this part.

19 (g) The amendments to Section 108 of the Internal Revenue
20 Code made by Section 13226 of the Revenue Reconciliation Act
21 of 1993 (~~P.L.~~ (*Public Law* 103-66), relating to modifications of
22 discharge of indebtedness provisions, shall apply to discharges
23 occurring on or after January 1, 1996, in taxable years beginning
24 on or after January 1, 1996.

25 *SEC. 31. Section 24343.7 of the Revenue and Taxation Code*
26 *is amended to read:*

27 24343.7. (a) Section 162(e) of the Internal Revenue Code,
28 relating to the denial of deduction for certain lobbying and
29 political expenditures, shall not apply.

30 (b) (1) The deduction allowed by Section 162(a) of the
31 Internal Revenue Code, relating to trade or business expenses,
32 shall include all the ordinary and necessary expenses, including,
33 but not limited to, traveling expenses described in Section
34 162(a)(2) of the Internal Revenue Code and the cost of preparing
35 testimony, paid or incurred during the taxable year in carrying on
36 any trade or business for any of the following:

37 (A) In direct connection with appearances before, submission
38 of statements to, or sending communications to, the committees,
39 or individual members, of Congress or of any legislative body of
40 a state, a possession of the United States, or a political subdivision



1 of any of the foregoing with respect to legislation or proposed
2 legislation of direct interest to the taxpayer.

3 (B) In direct connection with communication of information
4 between the taxpayer and an organization of which the taxpayer is
5 a member with respect to legislation or proposed legislation of
6 direct interest to the taxpayer and to that organization.

7 (C) That portion of the dues so paid or incurred with respect to
8 any organization of which the taxpayer is a member which is
9 attributable to the expenses of the activities described in
10 subparagraphs (A) and (B) carried on by that organization.

11 (2) Paragraph (1) shall not be construed as allowing the
12 deduction of any amount paid or incurred, whether by way of
13 contribution, gift, or otherwise, with respect to either of the
14 following:

15 (A) For participation in, or intervention in, any political
16 campaign on behalf of any candidate for public office.

17 (B) In connection with any attempt to influence the general
18 public, or segments thereof, with respect to legislative matters,
19 elections, or referendums.

20 ~~(c) Section 162(m) of the Internal Revenue Code, relating to~~
21 ~~certain excessive employee remuneration, shall not apply.~~

22 ~~(d) Section 162(k)(2)(A)(ii) of the Internal Revenue Code shall~~
23 ~~not apply.~~

24 *SEC. 32. Section 24347.6 is added to the Revenue and*
25 *Taxation Code, to read:*

26 *24347.6. Notwithstanding subdivision (e) of Section 17024.5,*
27 *a taxpayer may make a separate state election under Section*
28 *165(i)(1) of the Internal Revenue Code to take a loss attributable*
29 *to a disaster into account in the taxable year immediately*
30 *preceding the taxable year in which the disaster occurred.*

31 *SEC. 33. Section 24349 of the Revenue and Taxation Code is*
32 *amended to read:*

33 24349. (a) There shall be allowed as a depreciation deduction
34 a reasonable allowance for the exhaustion, wear, and tear
35 (including a reasonable allowance for obsolescence)—

36 (1) Of property used in the trade or business; or

37 (2) Of property held for the production of income.

38 (b) Except as otherwise provided in subdivision (c), for taxable
39 years ending after December 31, 1958, the term “reasonable
40 allowance” as used in subdivision (a) shall include, but shall not



1 be limited to, an allowance computed in accordance with
2 regulations prescribed by the Franchise Tax Board, under any of
3 the following methods:

4 (1) The straight-line method.

5 (2) The declining balance method, using a rate not exceeding
6 twice the rate that would have been used had the annual allowance
7 been computed under the method described in paragraph (1).

8 (3) The sum of the years-digits method.

9 (4) Any other consistent method productive of an annual
10 allowance that, when added to all allowances for the period
11 commencing with the taxpayer's use of the property and including
12 the taxable year, does not, during the first two-thirds of the useful
13 life of the property, exceed the total of those allowances that would
14 have been used had those allowances been computed under the
15 method described in paragraph (2).

16 Nothing in this subdivision shall be construed to limit or reduce
17 an allowance otherwise allowable under subdivision (a).

18 (c) Any grapevine replaced in a vineyard in California in a
19 taxable year beginning on or after January 1, 1992, as a direct
20 result of a phylloxera infestation in that vineyard, and any
21 grapevine replaced in a vineyard in California in a taxable year
22 beginning on or after January 1, 1997, as a direct result of Pierce's
23 Disease in that vineyard, shall have a useful life of five years,
24 except that it shall have a class life of 10 years for purposes of
25 depreciation under Section 168(g)(2) of the Internal Revenue
26 Code where the taxpayer has made an election under Section
27 263A(d)(3) of the Internal Revenue Code not to capitalize costs of
28 the infested vineyard. Every taxpayer claiming a deduction under
29 this section with respect to a grapevine as described in this
30 subdivision shall obtain a written certification from an
31 independent state-certified integrated pest management adviser, or
32 a state agricultural commissioner or adviser, that specifies that the
33 replanting was necessary to restore a vineyard infested with
34 phylloxera or Pierce's Disease. The taxpayer shall retain the
35 certification for future audit purposes.

36 (d) For purposes of this part, the deduction for property leased
37 to governments and other tax-exempt entities, as defined in
38 Section 168(h) of the Internal Revenue Code, shall be limited to
39 the amount determined under Section 168(g) of the Internal



1 Revenue Code, relating to alternative depreciation system for
2 certain property.

3 (e) (1) In the case of any building erected or improvements
4 made on leased property, if the building or improvement is
5 property to which this section applies, the depreciation deduction
6 shall be determined under the provisions of this section.

7 (2) An improvement shall be treated for purposes of
8 determining gain or loss under this part as disposed of by the lessor
9 when so disposed of or abandoned if both of the following occur:

10 (A) The improvement is made by the lessor of leased property
11 for the lessee of that property.

12 (B) The improvement is irrevocably disposed of or abandoned
13 by the lessor at the termination of the lease by the lessee.

14 This subdivision shall not apply to any property to which
15 Section 168 of the Internal Revenue Code does not apply for
16 federal *income tax* purposes by reason of Section 168(f) of the
17 Internal Revenue Code. Any election made under Section
18 168(f)(1) of the Internal Revenue Code for federal *income tax*
19 purposes with respect to that property shall be treated as a binding
20 election for state purposes under this subdivision with respect to
21 that same property and no separate election ~~under subdivision (e)~~
22 ~~of Section 23051.5~~ with respect to that property shall be allowed.

23 (3) (A) In determining a lease term, both of the following shall
24 apply:

25 (i) There shall be taken into account options to renew.

26 (ii) Two or more successive leases which are part of the same
27 transaction (or a series of related transactions) with respect to the
28 same or substantially similar property shall be treated as one lease.

29 (B) For purposes of clause (i) of subparagraph (A), in the case
30 of nonresidential real property or residential rental property, there
31 shall not be taken into account any option to renew at fair market
32 value determined at the time of renewal.

33 (f) (1) Section 167(g) of the Internal Revenue Code, relating
34 to depreciation under income forecast method, shall apply except
35 as otherwise provided.

36 (2) Section 167(g)(2)(C) of the Internal Revenue Code is
37 modified by substituting “Section 19521” in lieu of “Section
38 460(b)(7)” of the Internal Revenue Code.

39 (3) Section 167(g)(5)(D) of the Internal Revenue Code is
40 modified by substituting “Part 10.2 (commencing with Section



1 18401) (other than Article 2 (commencing with Section 19021)
2 and Sections 19142 to 19150, inclusive)” in lieu of “Subtitle F
3 (other than Sections 6654 and 6655).”

4 *SEC. 34. Section 24355.5 of the Revenue and Taxation Code*
5 *is amended to read:*

6 24355.5. (a) Section 197 of the Internal Revenue Code,
7 relating to amortization of goodwill and certain other intangibles,
8 shall apply, except as otherwise provided.

9 (b) (1) Section 13261(g) of the Revenue Reconciliation Act of
10 1993-~~(P.L.~~ (*Public Law* 103-66), relating to effective dates, shall
11 apply, except as otherwise provided.

12 (2) (A) If a taxpayer has, at any time, made an election for
13 federal *income tax* purposes under Section 13261(g)(2) of the
14 Revenue Reconciliation Act of 1993-~~(P.L.~~ (*Public Law* 103-66),
15 relating to election to have amendments apply to property acquired
16 after July 25, 1991, or Section 13261(g)(3) of that act, relating to
17 elective binding contract exception, a separate election for state
18 purposes shall not be allowed ~~under paragraph (3) of subdivision~~
19 ~~(e) of Section 23051.5~~ and the federal election shall be binding for
20 purposes of this part.

21 (B) If a taxpayer has not made an election for federal *income*
22 *tax* purposes under Section 13261(g)(2) of the Revenue
23 Reconciliation Act of 1993-~~(P.L.~~ (*Public Law* 103-66), relating to
24 election to have amendments apply to property acquired after July
25 25, 1991, or Section 13261(g)(3) of that act, relating to elective
26 binding contract exception, with respect to property acquired
27 before August 11, 1993, then the taxpayer shall not be allowed to
28 make an election under Section 13261(g) of the Revenue
29 Reconciliation Act of 1993-~~(P.L.~~ (*Public Law* 103-66), for
30 purposes of this part, with respect to that property.

31 (c) Notwithstanding any other provision of this section, each of
32 the following shall apply:

33 (1) No deduction shall be allowed under this section for any
34 taxable year beginning prior to January 1, 1994.

35 (2) No inference is intended with respect to the allowance or
36 denial of any deduction for amortization in any taxable year
37 beginning before January 1, 1994.

38 (3) In the case of an intangible that was acquired in an taxable
39 year beginning before January 1, 1994, the amount to be amortized
40 shall not exceed the adjusted basis of that intangible as of the first



1 day of the first taxable year beginning on or after January 1, 1994,
2 and that amount shall be amortized ratably over the period
3 beginning with the first month of the first taxable year beginning
4 on or after January 1, 1994, and ending 15 years after the month
5 in which the intangible was acquired.

6 *SEC. 35. Section 24369.4 of the Revenue and Taxation Code*
7 *is amended to read:*

8 24369.4. (a) Section 198 of the Internal Revenue Code,
9 relating to expensing of environmental remediation costs, shall
10 apply, except as otherwise provided.

11 (b) Section 198(b)(2) is modified to refer to Sections 24349 to
12 24355, inclusive, in lieu of Section 167 of the Internal Revenue
13 Code.

14 (c) Section 198(f) is modified to refer to Section 24442 in lieu
15 of Section 280B of the Internal Revenue Code.

16 (d) (1) If a taxpayer has, at any time, made an election for
17 federal *income tax* purposes under Section 198(a) of the Internal
18 Revenue Code to have Section 198 of the Internal Revenue Code
19 apply to a qualified environmental remediation expenditure,
20 Section 198 of the Internal Revenue Code shall apply to that
21 qualified environmental remediation expenditure for state
22 purposes, a separate election for state purposes shall not be
23 allowed ~~under paragraph (3) of subdivision (e) of Section 23051.5,~~
24 and the federal election shall be binding for purposes of this part.

25 (2) If a taxpayer fails to make an election for federal *income tax*
26 purposes under Section 198(a) of the Internal Revenue Code to
27 have Section 198 of the Internal Revenue Code apply to a qualified
28 environmental remediation expenditure, an election under Section
29 198(a) of the Internal Revenue Code shall not be allowed for state
30 purposes, Section 198 of the Internal Revenue Code shall not apply
31 to that qualified environmental remediation expenditure for state
32 purposes, and a separate election for state purposes shall not be
33 allowed ~~under paragraph (3) of subdivision (e) of Section 23051.5.~~

34 (e) No inference as to the proper treatment for purposes of this
35 part of qualified environmental remediation expenditures for
36 periods before the enactment of this section shall be made.

37 *SEC. 36. Section 24443 of the Revenue and Taxation Code is*
38 *amended to read:*



1 24443. (a) Section 274 of the Internal Revenue Code,
2 relating to the disallowance of certain entertainment, gift, travel,
3 etc., expenses, shall apply, except as otherwise provided.

4 (b) Section 274(a)(3) of the Internal Revenue Code, relating to
5 denial of deduction for club dues, ~~shall not apply~~, *is modified by*
6 *substituting “for taxable years beginning on or after January 1,*
7 *2002, and before January 1, 2003, a deduction equal to 25 percent*
8 *of the amounts paid or incurred shall be allowed under this part”*
9 *for “no deduction shall be allowed under this chapter.”*

10 *SEC. 37. Section 24710 of the Revenue and Taxation Code is*
11 *amended to read:*

12 24710. (a) For each taxable year beginning on or after
13 January 1, 1997, Section 475 of the Internal Revenue Code,
14 relating to mark to market accounting method for securities
15 dealers, shall apply, except as otherwise provided.

16 (b) Section 13233(c)(2)(C) of the Revenue Reconciliation Act
17 of 1993-~~P.L.~~ (*Public Law* 103-66), relating to the effective date
18 for changes in the mark to market accounting method for securities
19 dealers, is modified to provide that the amount taken into account
20 under Section 481 of the Internal Revenue Code of 1986 shall be
21 taken into account ratably over the five-taxable-year period
22 beginning with the first taxable year beginning on or after January
23 1, 1997.

24 (c) (1) If a taxpayer has, at any time, made an election for
25 federal *income tax* purposes under Section 475(e) of the Internal
26 Revenue Code, relating to election of mark to market for dealers
27 in commodities, to have Section 475 of the Internal Revenue Code
28 apply, Section 475 of the Internal Revenue Code shall apply to that
29 dealer in commodities for state purposes, a separate election for
30 state purposes shall not be allowed ~~under paragraph (3) of~~
31 ~~subdivision (e) of Section 23051.5~~, and the federal election shall
32 be binding for purposes of this part.

33 (2) If a taxpayer fails to make, or has not previously made, an
34 election for federal *income tax* purposes under Section 475(e) of
35 the Internal Revenue Code, relating to election of mark to market
36 for dealers in commodities, to have Section 475 of the Internal
37 Revenue Code apply, an election under Section 475(e) of the
38 Internal Revenue Code shall not be allowed for state purposes,
39 Section 475 of the Internal Revenue Code shall not apply to that
40 dealer in commodities for state purposes, and a separate election



1 for state purposes shall not be allowed ~~under paragraph (3) of~~
2 ~~subdivision (e) of Section 23051.5.~~

3 (d) (1) If a taxpayer has, at any time, made an election for
4 federal *income tax* purposes under Section 475(f)(1) of the
5 Internal Revenue Code, relating to election of mark to market for
6 traders in securities, to have Section 475 of the Internal Revenue
7 Code apply to a trade or business, Section 475 of the Internal
8 Revenue Code shall apply to that trader in securities for state
9 purposes with respect to that trade or business, a separate election
10 for state purposes with respect to that trade or business shall not be
11 allowed ~~under paragraph (3) of subdivision (e) of Section 23051.5,~~
12 and the federal election shall be binding for purposes of this part.

13 (2) If a taxpayer fails to make, or has not previously made, an
14 election for federal *income tax* purposes under Section 475(f)(1)
15 of the Internal Revenue Code, relating to election of mark to
16 market for traders in securities, to have Section 475 of the Internal
17 Revenue Code apply to a trade or business, an election under
18 Section 475(f)(1) of the Internal Revenue Code shall not be
19 allowed for state purposes with respect to that trade or business,
20 Section 475 of the Internal Revenue Code shall not apply to that
21 trader in securities for state purposes with respect to that trade or
22 business, and a separate election for state purposes shall not be
23 allowed ~~under paragraph (3) of subdivision (e) of Section 23051.5.~~

24 (e) (1) If a taxpayer has, at any time, made an election for
25 federal *income tax* purposes under Section 475(f)(2) of the
26 Internal Revenue Code, relating to election of mark to market for
27 traders in commodities, to have Section 475 of the Internal
28 Revenue Code apply to a trade or business, Section 475 of the
29 Internal Revenue Code shall apply to that trader in commodities
30 for state purposes with respect to that trade or business, a separate
31 election for state purposes with respect to that trade or business
32 shall not be allowed ~~under paragraph (3) of subdivision (e) of~~
33 ~~Section 23051.5,~~ and the federal election with respect to that trade
34 or business shall be binding for purposes of this part.

35 (2) If a taxpayer fails to make, or has not previously made, an
36 election for federal *income tax* purposes under Section 475(f)(2)
37 of the Internal Revenue Code, relating to election of mark to
38 market for traders in commodities, to have Section 475 of the
39 Internal Revenue Code apply to a trade or business, an election
40 under Section 475(f)(2) of the Internal Revenue Code shall not be



1 allowed for state purposes with respect to that trade or business,
2 Section 475 of the Internal Revenue Code shall not apply to that
3 trader in commodities for state purposes with respect to that trade
4 or business, and a separate election for state purposes with respect
5 to that trade or business shall not be allowed ~~under paragraph (3)~~
6 ~~of subdivision (e) of Section 23051.5.~~

7 (f) (1) An election under Section 475(e) or (f) of the Internal
8 Revenue Code made for federal *income tax* purposes with respect
9 to a taxable year beginning before January 1, 1998, shall be treated
10 as having been made for state purposes with respect to the first
11 taxable year beginning on or after January 1, 1998.

12 (2) Section 1001(d)(4)(B) of the Taxpayer Relief Act of 1997
13 ~~(P.L. (Public Law 105-34)~~, relating to the effective date for
14 election of mark to market by securities traders and traders and
15 dealers in commodities, is modified to provide that the
16 requirement for timely identification shall be treated as timely
17 made for state purposes if that identification is treated as timely
18 made for federal *income tax* purposes, and the amount taken into
19 account under Section 481 of the Internal Revenue Code of 1986
20 shall be taken into account ratably over the four-taxable-year
21 period beginning with the first taxable year beginning on or after
22 January 1, 1998.

23 *SEC. 38. Section 24872.4 of the Revenue and Taxation Code*
24 *is amended to read:*

25 24872.4. (a) Section 856(d)(7)(C)(ii) of the Internal
26 Revenue Code is modified by substituting the phrase “if received
27 by an organization described in subdivision (b) of Section 17651
28 of Part 10 or Section 23731” for the phrase “if received by an
29 organization described in section 511(a)(2).”

30 (b) (1) An election under Section 856(e)(5) of the Internal
31 Revenue Code for federal *income tax* purposes shall be treated for
32 purposes of this part as an election made by the real estate
33 investment trust under Section 856(e)(5) of the Internal Revenue
34 Code for state purposes and a separate election ~~under paragraph (3)~~
35 ~~of subdivision (e) of Section 23051.5~~ shall not be allowed.

36 (2) Any revocation of an election under Section 856(e)(5) of
37 the Internal Revenue Code for federal *income tax* purposes shall
38 be treated for purposes of this part as a revocation of the election
39 made by the real estate investment trust under Section 856(e)(5)
40 of the Internal Revenue Code for state purposes and a separate



1 election ~~under paragraph (3) of subdivision (e) of Section 23051.5~~
2 shall not be allowed with respect to the property for any
3 subsequent taxable year.

4 (3) If the real estate investment trust fails to make an election
5 under Section 856(e)(5) of the Internal Revenue Code for federal
6 *income tax* purposes with respect to any property, that property
7 shall not be treated for purposes of this part as foreclosure
8 property, an election under Section 856(e)(5) of the Internal
9 Revenue Code for state purposes with respect to that property shall
10 not be allowed, and a separate election ~~under paragraph (3) of~~
11 ~~subdivision (e) of Section 23051.5~~ shall not be allowed with
12 respect to that property.

13 (c) This section shall apply to taxable years beginning after
14 August 5, 1997.

15 (d) The amendments made to this section by the act adding this
16 subdivision shall apply to taxable years beginning on or after
17 January 1, 1998.

18 *SEC. 39. This act provides for a tax levy within the meaning*
19 *of Article IV of the Constitution and shall go into immediate effect.*
20 *The sections of this bill that conform to federal law, in whole or in*
21 *part, shall be operative with respect to the period as the federal law*
22 *provision to which it conforms.*

23
24
25 **All matter omitted in this version of the**
26 **bill appears in the bill as amended in the**
27 **Senate, January 7, 2002 (JR 11)**
28
29

